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India budget

Striking the Right Balance

India budget 2020

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"And more than the quality of its institutions, what distinguishes a developed country from a developing one is the degree of consensus in its politics, and thus its ability to take actions to secure a better future despite short-term pain."

Raghuram G. Rajan

Reflections

We are very happy to present before you an analysis of the Union Budget 2020.

This is the first budget in the new decade and the second one of the re-elected Government. Further, the Government was faced with the challenges arising on account of perceived slow down coupled with a strong demand from diverse industrial sectors and economists for doing something to boost the consumption or make sector specific concessions.

It is also important to keep in mind that in the FY 2019-20 the targets set for revenue collection will be missed by big margin resulting into higher fiscal deficit. The big-ticket reforms, including the demonetisation, GST and in the banking sector is taking its own time in producing results while in short term it has affected adversely the industrial climate and sentiments.

New opportunities emerged for India on account of decision of some of the multinationals to move out of China for their manufacturing operations. This prompted the Government to announce significant tax cut in corporate taxes in the middle of the Year in September 2019. Though, the Government had already introduced super rich tax for individuals, an expectation was built that there would be significant reduction in the personal taxation following the corporate tax cut. It clearly appears that fiscal deficit was leaving limited options for the Finance Minister for reducing the tax rates for individuals or carrying out structural changes in the capital gains taxation.

The Union Budget was presented in this background and should accordingly be viewed from that angle.

Some changes like determining residential status and significant economic presence in India would have far reaching impact in the long term. It would not only affect the way in which the persons organise their businesses but can also affect the way in which people do business in India or with India. The change in the dividend taxation structure would also require the groups to re-look at their holding structure.

There are green shoots in the economy giving signs of turn around and the Indian economy would be back on its feet of robust and best amongst the world on economic growth. We sincerely hope that the vision of the prime minister to reach US $ 5 trillion economy is fulfilled as dreamt.

Milin Mehta

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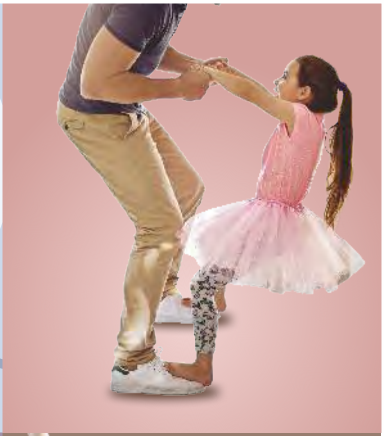
2020



State of Economy

India budget 2020

Striking the Right Balance

Economic survey

Background

Indian Economy is in the eye of a perfect storm as of today. Though the quest to reach the target of a USD 5 Trillion GDP by 2024-25 is still in sight, the headwinds being faced by economy might just make the target a bit more elusive. Certain domestic key indicators are showing a distress which does not augur well for the Economy.

- India's GDP growth slipped to a 26-quarter low of 4.5 per cent in the second quarter (July-September) of the current fiscal as per data released by National Statistical Office (NSO) in November 2019.
- The GDP growth rate has slowed for the sixth consecutive quarter with the previous low recorded at 4.3 per cent in March 2013.
- As per the NSO data, the Gross Value Added (GVA) growth in the Manufacturing Sector contracted by 1.0 per cent in the second quarter of the current fiscal from 6.9 per cent expansion in previous year.
- The key indicator of Manufacturing, Car sales in India fell by a record 19 per cent in 2019 as a slowing economy made consumers reluctant to spend on big-ticket items as per Society of Indian Automobile Manufacturers (SIAM).
- Sales of two wheelers - widely seen as an indicator of the health of the rural economy - fell 14 per cent in 2019 while sales of trucks - a barometer of overall economic growth - dropped 15 per cent. The declines are the worst in more than two decades.
- Construction sector GVA growth slowed to 3.3 per cent from 8.5 per cent over the previous year as per the NSO.

The global factors are also contributing to the weakness in the Indian Economy as evidenced by Ms. Gita Gopinath, the Chief Economist at the International Monetary Fund (IMF). The Global Economy is in a "synchronized slowdown" amidst growing trade barriers and heightened geopolitical tensions, the IMF stated in October 2019 as it downgraded the 2019 growth rate to below three per cent. Though the global growth in 2020 is projected to improve to 3.3 per cent, some of the current factors being played out might just put a dampener to this modest hike.

- An escalation in the ongoing trade dispute between the US and China. The trade dispute is not only affecting the two countries but other countries across the world. For instance, *the US had threatened countries that were using Huawei products, a Chinese tech giant.*
- Globally, companies are laying off employees, cutting down on expansion with some shutting down completely as it happened with Thomas Cook, a 178-year-old company in Britain.
- Country-specific uncertainty such as Britain's exit from the European Union

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("Brexit"). The British are still unsure as to whether they should leave the EU or remain putting a question mark on the existence of European Union.

- Heightened geopolitical tension between the US and Iran leading to disrupting the mid-stream and down-stream oil supply channel has the potential to escalate the oil prices back to USD 100/barrel mark levels not seen since 2014.
- Reduced consumption expenditure in major global economic regions including China and India has resulted in the reduction in global demand for goods and services and also contributed to the slowing global trade.
- Last but not the least, the full economic fallout of the *Coronavirus* originating in Wuhan, China will only be fully realized couple of months down the line. However, looking at the widespread contamination and the affected countries, the economic repercussions are bound to be severe and damaging.

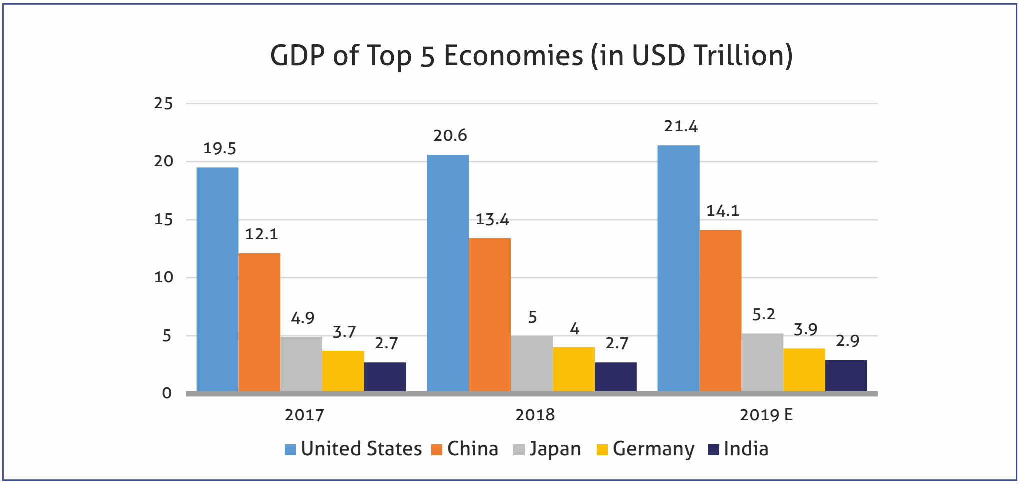
The NDA Government has the unenviable task of giving the necessary impetus to the slightly tottering economy which is direly in need of some immediate short term fixes along with certain key structural reforms which will put the economy back in track for the target of a USD 5 trillion in the next 5 years.

Indian Economy 2019-20

International Monetary Fund (IMF) has estimated the global output to grow at 2.9 per cent in 2019, declining from 3.6 per cent in 2018 and 3.8 per cent in 2017, slowest since the global financial crisis of 2009.

Inflation slightly rose to 4.1 per cent in April-December 2019, after a sharp decline from 5.9 per cent in 2014 to 3.4 per cent in 2018.

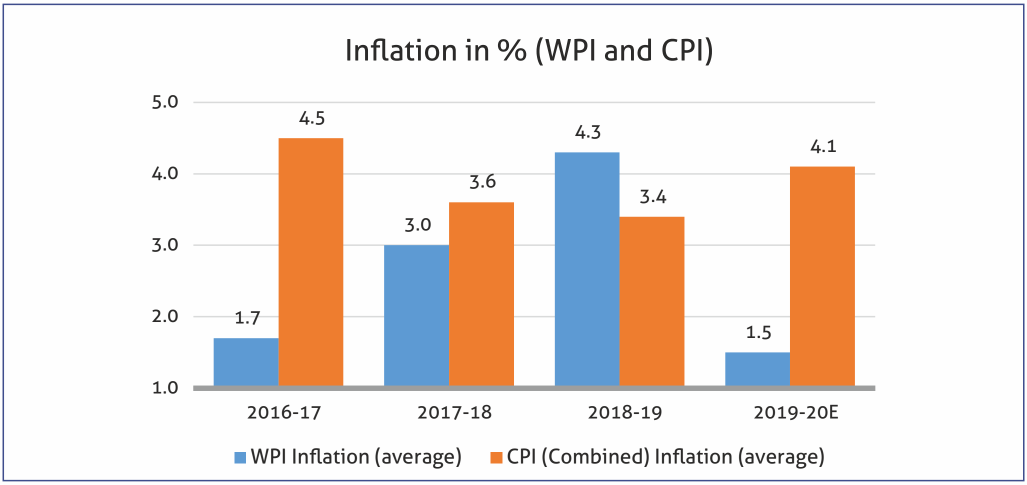
The IMF has estimated India's economy to become the fifth largest in the world, moving past United Kingdom and France with size estimated at US$ 2.9 trillion in 2019.



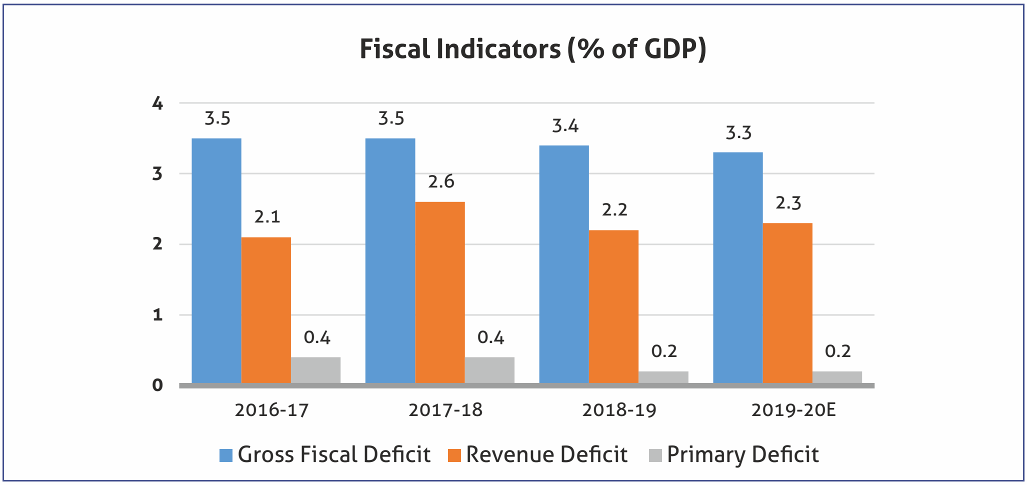
Despite the deceleration in GDP growth for the sixth consecutive quarter, the Bombay Stock Exchange (BSE) Sensex increased by 7 per cent at end December 2019 over end March 2019.

In H1 of 2019-20, CPI (Headline) inflation was estimated at 3.3 per cent. It was 7.35 per cent in December 2019 contributed mainly by supply side factors.

The Wholesale Price Index (WPI) inflation, declined from 3.2 per cent in April 2019 to 2.6 per cent in December 2019, reflecting weakening of demand pressure in the economy.



In 2019-20, Centre's fiscal deficit was budgeted at INR 7.04 lakh crore (3.3 per cent of GDP), as compared to INR 6.49 lakh crore (3.4 per cent of GDP) in 2018-19 PA. In the first eight months of 2019-20, fiscal deficit stood at 114.8 per cent of the budgeted level.



Indian Economy 2019-20

Net Tax revenue to the Centre envisaged to grow at ~25 per cent in 2019-20 BE grew at merely ~2.6 per cent during April to November 2019 owing primarily to low growth in Gross Tax Revenue (GTR) of 0.8 per cent during first eight months of 2019-20.

Goods and Services Tax (GST) collections grew by 4.1 per cent during April-November 2019.

On the expenditure side, the budgeted expenditure of the Central government grew at 12.8 per cent in April-November 2019 vis-à-vis the previous year.

Four open market operation (OMO) purchase auctions and a US$ 5 billion buy/sell swap auction was carried out.

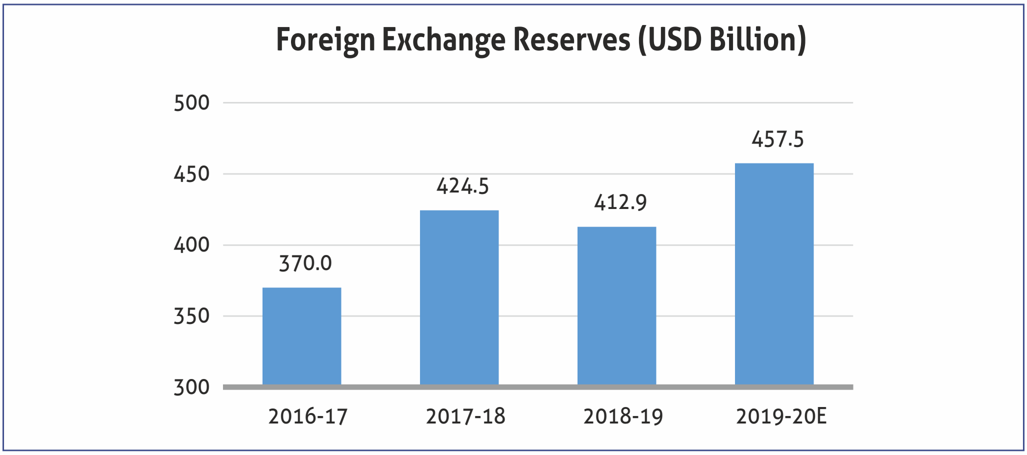
Reserve Bank of India has reduced the policy repo rate by 135 basis points since February 2019.

Bank credit started decelerating in H2 of 2018-19 and further in H1 of 2019-20 due to continuous build-up of Non-Performing Assets (NPAs) of banks.

The Current Account Deficit (CAD), which was 2.1 per cent of GDP in 2018-19 improved to 1.5 per cent in H1 of 2019-20 on the back of significant reduction in trade deficit.

India attracted a net FDI of US$ 24.4 billion in April-November of 2019 as compared to US$ 21.2 billion in April-November of 2018 while Net FPI inflow was at US$ 12.6 billion as against an outflow of US$ 8.7 billion in April-November 2019.

The forex reserves have built up from US$ 413 billion in end March 2019 to US$ 461.2 billion as on 10th January 2020 reflective of increasing confidence of overseas investors in India's economy.



On a net assessment of both the downside/upside risks, India's GDP growth is expected to grow in the range of 6.0 to 6.5 per cent in 2020-21.

Key Focus Areas

The Economic Survey of 2019-20 has espoused certain theories and activities that are required for the country to move towards the USD 5 trillion economy by the year 2025. Certain analysis and theories postulated by the Economic Survey brings out arguments against the GDP growth targets being overstated along with the urgent need for divestment of CPSEs and the further move to liberalize the economy through the "Invisible Hand" and parting ways from crony capitalism which was the hallmark of the past Governments.

Wealth Creation - The Invisible Hand Supported by the Hand of Trust

India has been dominant economic power globally for more than three-fourths of known economic history. The Survey finds that India's aspiration to become a USD 5 trillion economy weighs heavily on strengthening the invisible hand of market with the hand of trust that can support markets. Invisible Hand primarily means the pro-active policies of the Government in liberalizing the sectors and the Hand of Trust primarily is that the benefits that are being passed on are for greater good of the society and not to a select few.

- Thirukural, a treatise on enriching human life written by Tamil saint and philosopher Thiruvalluvar states "Make money – there is no weapon sharper than it to sever the pride of your foes." What this advocates is that wealth creation in itself is not a bad or incorrect thing is done by ethical means.
- Even after a long and rich tradition of emphasizing wealth creation, India deviated from this model for several decades after independence by dallying in Socialism.
- Evidently since 1991, the Invisible Hand of Markets, i.e., increasing economic openness, has had a phenomenal impact in enhancing wealth across sectors.
- Some of the key instruments for wealth creation as espoused in the Economic Survey are;
  - Equal opportunity for new entrants is the key of economic growth.
  - Pace of reforms for Ease of Doing Business need to pick up for India to hit the top 50 economies on this metric.
  - Efficient financial sector is the hallmark for enhancing efficiency in the economy as can be seen from the Chinese Banks.
- In a wealth creation model too, there is need for the State to ensure a moral compass to support the Invisible Hand. The corruption perception index, Transparency International tracks across countries, shows that since 2013 India has improved significantly on this index.
- The Survey introduces the idea of "trust as a public good that gets enhanced with greater use". What this espouses is that if there is high degree of trust,

economic activity can flourish despite the increased potential for opportunism.

Entrepreneurship - Wealth Creation at Grassroots

The "Startup India" initiative acknowledges entrepreneurship as an integral part of strategy to fuel productivity growth and wealth creation in India. World Bank's Data on Entrepreneurship states that India ranks third in number of new firms created worldwide. The same data shows that new firm creation has gone up considerably since 2014. The number of new firms in the formal sector grew at a compounded annual growth rate of 3.8 per cent from 2006-2014 whereas the growth rate from 2014 to 2018 has been at a CAGR 12.2 per cent.

- The impact of new firm entry is greatest in the Manufacturing and Services sectors. Entrepreneurial activity in the Manufacturing sector is highest in the regions of Gujarat, Meghalaya, Puducherry, Punjab and Rajasthan.
- States in the highest entrepreneurial activity in the Agriculture sector are Manipur, Meghalaya, Madhya Pradesh, Assam, Tripura and Orissa.
- Despite being the 3rd largest ecosystem for entrepreneurship in the world, India still lags behind in formal entrepreneurship on a per-capita basis when compared to other countries. Some of the factors which can improve this ratio are:
- Increase the literacy levels at a faster pace by adding more schools and colleges which will spur entrepreneurship.
- Better connectivity to villages can improve access to local markets and thereby lead to enhanced entrepreneurial activity.
- Introduce policies that foster ease of doing business and improve on labour regulations, especially in the manufacturing sector.

Pro Business V/s Pro Crony

Pro Business and Pro Crony are two opposite spectrums on the wealth creation model. In one the wealth of the nation as a whole increases where in the other model, wealth of few in enhanced at the expense of others. Viewed from the eye of the Stock market which is the fundamental indicator of Economic Activity, creative destruction has increased significantly after reforms introduced from 1991. Before liberalization of 1991, a Sensex firm was expected to survive for ~60 years which has drastically reduced to only ~12 years after liberalization. One explanation can be the rapidly changed economic and competitive environment leads to certain companies becoming unviable but evidence points to the pro-crony policies leading to rampant allocation of both financial and natural resources to specific private interests which were later found wanting. The pro-crony policies led to siphoning of huge sums from banking / NBFC sector putting a huge burden on the economy.

- India has followed an oblique growth pattern, wherein the prime mover of the economy has shifted directly from agriculture to services. Today, almost 60 per cent of Indian GDP is attributable to the services sector.
- The forces of creative destruction have led to the emergence of sunrise sectors such as financial services and information technology. Virtually non-existent in the Sensex of the early 1990s, the share of these sectors has increased to ~55% of total market cap in FY19.
- Pro-crony policies have the effect of eroding wealth in the economy as cronyism fosters inefficiencies. The Survey has found that there are three distinguishing characteristics of pro crony capitalism:
  - Willful defaulters are more secretive than both non-defaulters and firms that default out of genuine distress. Approximately 60 per cent of non-defaulters and distress-defaulters provided related party transaction (RPT) disclosures in their annual report against ~40 per cent in the case of willful defaulters.
  - Promoters of willfully defaulting firms pledged on average ~50 per cent of their shareholding to lenders against ~30 per cent and 11 per cent for non-defaulters and firms that default out of genuine distress.
  - Willful defaulters make large loans to related parties.

Government Intervention – Not Required

Government intervention though well intended does not always give the results that are desired or envisaged. One ready example is the frequent and unpredictable imposition of blanket stock limits on commodities under Essential Commodities Act (ECA) that neither brings down prices nor reduces price volatility. Second is the regulation of prices of drugs through the Drug Price Control Order (DPCO) 2013 has led to increase in the price of a regulated pharmaceutical drug against that of a similar drug whose price is not regulated.

- Excessive intervention especially where markets can do the job of enhancing citizens' welfare perfectly well stifles economic freedom. Government can impact markets either through direct participation (as a market maker or as a buyer or supplier of goods and services), or through indirect participation in private markets (through regulation, taxation, subsidy or other influence).
- Some examples of the failure of direct intervention are the introduction of ECA in September 2019 to control the price of onions. The stock limits of wholesale traders were reduced to 20 quintals from the normal 500 quintals had no impact of the volatility of the

wholesale or retail prices. The sharp reduction in the limits led to offloading of the most of the Kharif crop in October resulting in sharp increase in volatility.

- The Survey findings on DPCO show that prices of drugs that came under DPCO, 2013 increased on average by INR 71 per mg of the active ingredient. For drugs that were unaffected by DPCO, 2013, the prices increased by only INR 13 per mg of the active ingredient.
- The Survey finds that India is still stuck with several forms of Government interventional strategies, either because of political pressures or otherwise that are not in sync with today's economy and ultimately act as a deterrent to strong economic growth.
- Certain anachronistic Acts like Capital Issues (Control) Act, 1947, Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, Foreign Exchange Regulation Act, 1973, Urban Land Ceiling and Regulation Act, 1976 have either been repealed or brought in with a changed avatar. There are still certain Acts such as ECA, 1955 FCI, 1965, Factories Act, 1948 that need to be dissolved or at least modified to bear today's realities.

Creating Jobs and Growth – Exports in Network Products

If India wishes to capitalize on the current economic environment wherein China is not seen as the most preferred business partner for exports, India has to chart an export oriented labour intensive strategy to fulfil this void. Exports of network products, which is expected to equal USD 7 trillion worldwide in 2025, can contribute a quarter of the increase in value-added for the $5 trillion economy by 2025. For this target to be achieved, India has to have a laser like precision for assembly of network products on a global scale.

- India's share in merchandise (goods) exports has grown at 13.2 per cent per annum from 1991 and our share in world exports has increased from 0.6 per cent in 1991 to 1.7 per cent in 2018. Even by 2018, India's world market share remains miniscule compared to 12.8 per cent for China.
- By importing components and assembling them in China, it has created jobs at an enormous scale. Going by a similar model by integrating "Assemble in India" for the world into "Make in India", India can raise its export market share to about 3.5 per cent by 2025 and 6 per cent by 2030.
- Some of the major issues hampering India's exports are the high diversification combined with low specialization which implies that India is spreading its exports too thinly leading to its lackluster performance.
- India's market penetration in high-income countries is low and has declined substantially during the recent decades primarily on account of the distorted pattern of its specialization. Countries like India with low level of participation in Global

Value Chains (GVCs) are finding it difficult to export capital intensive products to the quality/brand conscious developed markets.

Ease of Doing Business – Scope for Improvement

Ease of doing business is fundamental to entrepreneurship, innovation and wealth creation. Though India has risen significantly in the World Bank's Doing Business rankings, there are certain categories where it lags behind such as Starting a Business, Registering Property, Paying Taxes and Enforcing Contracts. As an example, registering property in Delhi and Mumbai takes 49 and 68 days respectively, whereas it takes only 9 days in China and 3.5 days in New Zealand. Export competitiveness is also lagging since it not only adds to the production costs but also the logistics cost.

- India has made commendable gains in the World Bank's Ease of Doing Business rankings from a low of 142 in 2014 to 63 in 2019.
- Some of positives in the Ease of Doing business are;
  - The number of procedures required to set up a business in India have reduced from 13 to 10 over the past ten years and it takes an average of ~18 days to set up a business in India today from ~30 days taken in 2009.
  - India successes, if compared with some of the global leaders do not look that impressive. For example, it just takes half-a-day with a single form and minimal cost to set up a business in New Zealand.
  - Enforcing contracts is one parameter in which India's performance has been very poor over the years. While India takes ~1,445 days to resolve an average dispute, New Zealand only takes ~216 days.
- Most manufacturing units in India have small/limited capacities and consequently low manufacturing efficiencies which are a great disadvantage in the Global Supply Chain.
- India trails because of its archaic laws pertaining to various licenses & permits, multiple agencies to deal with, complex tax laws, old and bulky labour laws and the practical difficulties of business closure, if case so arises.

Bank Nationalization – Turning Back the Clock

A large and developing economy needs an efficient banking sector to support its growth. This has been seen from China which has as of date the four of the world's largest banks. It has been historically observed that the top five economies have always been well supported by their banks. Public Sector Banks (PSBs) account for 70 per cent of the market share in Indian banking therefore the onus of building and supporting the Indian economy falls squarely on them. Yet it has been observed that on every performance parameter the PSBs are inefficient compared to their peer groups. Various studies done over the years have recommended the use of Fintech to improve the efficiency in the Banking sector.

- In 2019, India completed the 50th anniversary of the bank nationalization undertaken in 1969. The PSBs as of today has a combined work force of 389,956 officers, 295,380 clerks, and 121,647 and account for 70 per cent of the market share in banking.
- In spite of the scale advantages, the 2019 performance statistics of PSBs are horrible. PSBs reported gross and net NPAs of INR 7.4 lakh crore and INR 4.4 lakh crore respectively amounting to ~80 per cent of the total NPAs in India's banking system.
- There are many favourable drivers which can turn the tide for PSBs including:
  - Highly favourable demographics – with 35 per cent of its population between 15 and 29 years of age.
  - Modern digital infrastructure that encompasses the "JAM" trinity of financial inclusion, the Aadhaar unique identification system, and a well-developed mobile phone network.
  - Uniform indirect taxation system (GST) to replace a fragmented, complex state-level system.
- All the above indicates the great possibilities exist for the Indian banking sector to grow proportionate to the scale of the Indian Economy. If the PSBs can capitalize on the burgeoning needs of the Indian demographics with the right use of financial technologies, the PSBs have the requisite resources to take India to the USD 5 trillion mark.

NBFC Sector – Walking on Thin Ice

Payment defaults by subsidiaries of Infrastructure Leasing and Financing Services and by Dewan Housing Finance Limited resulted in mass scale liquidation of investment in Liquid Debt Mutual Funds (LDMFs) by the investors. The defaults triggered widespread panic across the entire gamut of NBFC-financiers resulting in a funding (liquidity) crisis in the NBFC sector which is not only well known but much debated as well.

- The liquidity crunch in the shadow banking system in India took place in the wake of defaults on loan obligations by two major Non-Banking Financial Companies (NBFCs) namely Infrastructure Leasing & Financial Services (IL&FS) & Dewan Housing Finance Limited (DHFL) over the past two years.
- In response to the defaults, mutual fund houses started selling off their investments in the NBFC sector to reduce exposure to stressed NBFCs. In fact, DSP Mutual Fund sold DHFL commercial paper worth INR 300 crores

at a steep discount in September 2018.

- On June 4, 2019, the net asset value of debt funds, which held debt instruments issued by the stressed NBFCs, fell by 53 per cent in one day when news about DHFL default became public.
- At the primary level, the root cause of the liquidity crisis in the NBFC sector can be attributed to the over-dependence of NBFCs on the short-term wholesale funding market.
- The following policy initiatives can be deployed to arrest financial instability in the shadow banking system;
  - Regulators can employ pre-determined Health Score to detect early warning signals of impending rollover risk problems in individual NBFCs.
  - When faced with a serious liquidity crunch, regulators can use the Health Score as a basis for optimally directing capital infusions to deserving NBFCs.
  - Prudential thresholds of wholesale lending to be introduced in the shadow banking system to internalize the systemic risk concerns.

Privatization and Wealth Creation – Selling the Family Silver

Similar to the inefficiencies seen in the PSBs, the market perceives Indian PSUs to be sub-optimal in their handling of the entities. This can be seen from the fact that the recent approval of strategic disinvestment in Bharat Petroleum Corporation Limited (BPCL) led to an increase in value of shareholders' equity of BPCL by INR 33,000 crores. Analysis has shown that privatized Central Public Sector Enterprises (CPSEs) on an average, perform better post privatization than their peers in terms of net worth, net profit, return on assets (ROA), return on equity (RoE), gross revenue, net profit margin, sales growth and gross profit per employee. This improvement can be seen not only when compared with peer CPSEs but also in the improvement of the performance of the individual CPSE.

- Strategic disinvestment is guided by the simple economic principle that Government should discontinue its engagement in manufacturing/producing goods and services in sectors where competitive markets are mature and well developed.
- Some of the key findings of the analysis done under Economic Survey for pushing the case for Divestments are as follows;
  - Disinvestment improves financial performance, improves overall productivity and unlocks their potential to create wealth.
  - Aggressive disinvestment by strategic sale can bring about higher profitability, promote efficiency, increase competitiveness and promote professionalism in

management in CPSEs.

- Focus on strategic disinvestment to exit from non-strategic business and working towards optimizing economic potential of the CPSEs.
- Government can transfer the stake in the listed CPSEs to a separate corporate entity (similar to Temasek Holdings Company in Singapore, which is a Singapore government holding Company) for better management and control.

India's GDP Overstated – Fact or Fiction

Any Investors wishing to invest in a country look at the potential growth in the economy, the key determinant of which is the Gross Domestic Product (GDP). Therefore, the recent debate about India's GDP growth rates following the revision in India's GDP estimation methodology in 2011 assumes significance, especially given the recent slowdown in the growth rate. The models that incorrectly over-estimated GDP growth by 2.77 per cent for India post-2011 has also resulted in the mis-estimate GDP growth over the same time period for 51 other countries out of 95 countries in the sample.

- In recent times, there has been fair number of discussions regarding the correctness / accuracy of India's GDP growth rates, with particular focus being placed on these growth rates following the change in the GDP estimation methodology in 2011-12.
- The standard difference-in-difference (DID) model is an econometric technique that attempts to mimic an experimental research design by studying the differential effect of a quasi-experiment such as a GDP methodology change. The differential effect studied is the difference in average GDP growth rate in a country that has gone through
- The methodology change, such as India (treatment group), versus other countries which have not gone through the change (control group).
- Fundamentally the DID Model evaluates / asks the question "what would have been the estimate of the Indian GDP growth rate if the methodological change had not been implemented?"
- The DID models used in the analysis fail to show any misestimation in the Indian GDP. The analysis concluded by examining other signs that may indicate a problem with the GDP estimation methodology.

Thalinomics – The Economics of a Plate of Food in India

The better way to make economics relatable to a common person is show something that he / she sees on daily basis. "Thalinomics: The economics of a plate of food in India" is an attempt to quantify what a common person pays for a Thali across India. Is the inflation the same for a vegetarian Thali as for a non-vegetarian one? Is the inflation in the price of a Thali different across different states and regions in India? The analysis depicts that an average household of five individuals that eats two vegetarian Thalis a day gained around INR 10,887 on average per year while a non-vegetarian household gained INR 11,787 on average, per year.

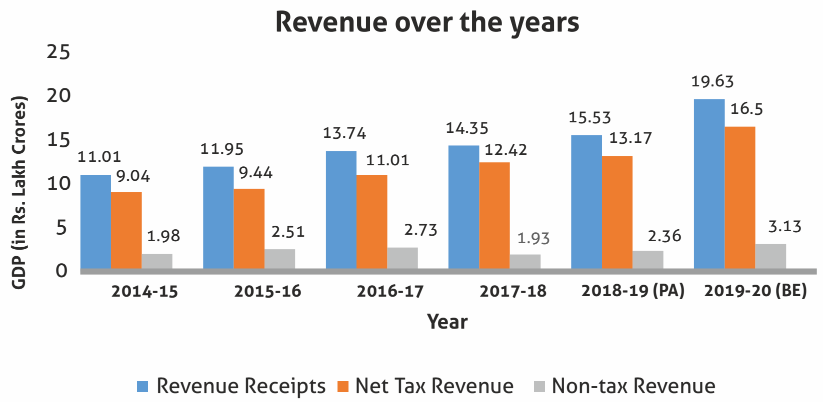
- The food and beverages constitute around 45.9 per cent in the Consumer Price Index-Combined. Thus, to communicate the trends in prices to the common man is through the cost incurred in putting together one complete, homemade meal – the Indian Thali.
- In terms of vegetarian Thali, it was found that, an individual who would have spent around 70 per cent of his/her daily wage on two Thalis for a household of five in 2006-07 is able to afford same number of Thalis from around 50 per cent of his daily wage in 2019-20 (April to October). Similarly, the affordability of non-vegetarian Thalis has also increased with the share of wages required decreasing from around 93 per cent to around 79 per cent between 2006-07 and 2019-20 (April to October).
- Affordability of Thalis vis-à-vis a day's pay of a worker has improved over time indicating improved welfare of the common person.

Sectoral Economic Performance

Fiscal Developments

Revenues

Budget 2019-20 estimated the Gross Tax Revenue (GTR) to be INR 24.61 lakh crore (i.e. 11.7 per cent of GDP) an increase of 9.5 per cent over 2018-19 Revised Estimates (RE) and 18.3 per cent over 2018-19 Provisional Actuals (PA).



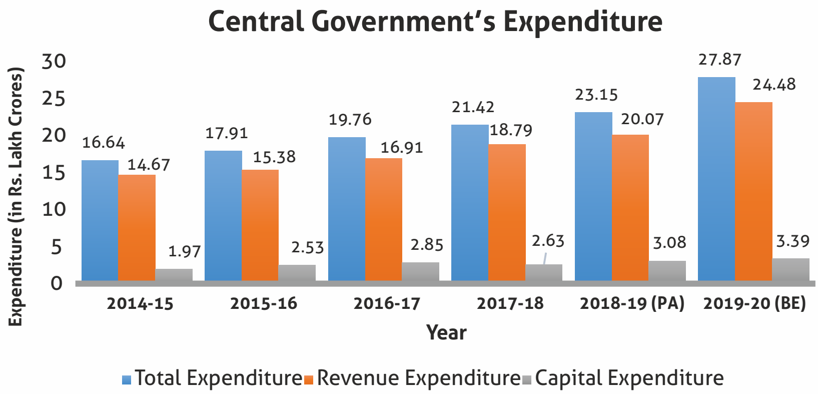
Source: Union Budget Documents & CGA
BE: Budget Estimates, PA: Provisional Actuals

During the year 2019-20 (up to November), the actual realization of Non-debt Capital receipts (which includes recovery of loans and advances and disinvestment receipts) has been INR 0.29 lakh crore against Budget Estimates (BE) of INR 1.20 lakh crore, which is merely 24.17% of BE.

Gross GST collections was INR 8.05 lakh crore in April to November 2019, which is an increase of 3.7 per cent over the corresponding period last year.

Expenditure

The composition of government expenditure in the last few years reveals that expenditure on defence services, salaries, pensions, interest payments and major subsidies account for more than 60 per cent of total expenditure.



Source: Union Budget Documents & CGA

BE: Budget Estimates, RE: Revised Estimates (as per Interim Budget), PA: Provisional Actuals

For the year 2019-20, the States have budgeted for gross fiscal deficit of 2.6 per cent of GDP as against an estimate of 2.9 per cent in 2018-19 RE and 2.4 per cent in 2017-18. Financing via market borrowings has increased from 61.6 per cent in 2015-16 to 73.7 per cent in 2018-19 RE and is further expected to rise to 87.9 per cent in 2019-20 BE

External Sector

India's external sector gained stability in the H1 of 2019-20, witnessing improvement in Balance of Payments (BoP) position due to narrowing of current account deficit (CAD) from 2.1 per cent in 2018-19 to 1.5 per cent of GDP in H1 of 2019-20. India's foreign reserves are comfortably placed at US$ 461.2 billion as on 10th January 2020.

In sync with an estimated 2.9 per cent growth in global output in 2019, global trade is estimated to grow at 1.0 per cent after having peaked in 2017 at 5.7 per cent.

Net FDI in the first eight months of 2019-20 stood at US$ 24.4 billion, which improved the BoP position.

After a significant reduction in 2014-19 relative to 2009-14, India's external debt to GDP ratio slightly increased by 0.3 per cent at the end of first half of 2020 over its level at end-March 2019, primarily on account of an increase in commercial borrowings, non-resident deposits and short-term trade credit.

Monetary Management and Financial Intermediation

The repo rate was cut by aggregate 110 basis points in four consecutive Monetary Policy Committee meetings in the financial year due to slower growth and lower inflation.

RBI conducted a US$/INR buy/sell swap

auction of US$ 5 billion for a tenor of three years in April, thereby injecting INR 34,874 crore, and two Open Market Operations (OMO) purchase auctions in May amounting to INR 25,000 crore.

During the first half of 2019-20, the 10-year benchmark G-Sec yield mostly softened, tracking subdued crude oil prices, surplus liquidity, and four consecutive policy rate cuts amounting to 110 bps.

GNPA ratio of Public Sector Banks (PSBs) was unchanged at 12.3 per cent while stressed advances ratios increased from 12.7 per cent at end March 2019 to 12.9 per cent at end September 2019.

Bank Credit growth (YoY) moderated from 12.9 per cent in April 2019 to 7.1 per cent as on December 20, 2019 due to a negative growth of credit to Micro, Small and Medium Enterprises and Textile.

The growth of loans from NBFCs declined from 27.6 per cent in September 2018 to 9.9 per cent at end September 2019. The third quarter of 2018-19 witnessed liquidity stress.

During April-December 2019, 47 companies mobilized INR 10,895 crore through public equity issuance compared to 103 companies raising INR 13,947 crore in April-December 2018, which is a decrease of 21.9 per cent over the period.

Price and Inflation

Headline Consumer Price Index-Combined (CPI-C) inflation increased to 4.1 per cent in 2019-20 (9 months) as compared to 3.7 per cent in same period of 2018-19.

Wholesale Price Index (WPI) inflation has seen an increase between 2015-16 and 2018-19, it fell from 4.7 per cent in 2018-19 (9 months) to 1.5 per cent during same period of 2019-20. This is due to fall in food inflation.

Sustainable Development and Climate Change

India's composite Sustainable Development Growth (SDG) index score has improved from 57 in 2018 to 60 in 2019.

India is among a few countries in the world where forest and tree cover have increased over the years and stands at 24.56 per cent of the geographical area of the country.

India has emerged as the second largest Emerging green bond market after China.

India had announced 175GW targets for renewables by 2022 with a longer term target of 450GW.

Agriculture & Food Management

Agriculture and its allied sectors still remain an important sector because of its continued role in employment, income and most importantly in national food security.

Its contribution to national income has gradually declined from 18.2 per cent in 2014-15 to 16.5 in 2019-20, reflecting the development process and the structural transformation taking place in the economy.

GVA at constant (2011-12) prices for2019-20 from 'Agriculture, Forestry and Fishing' sector is estimated to grow by 2.8 per cent as compared to growth of 2.9 per cent in 2018-19.

The agricultural credit flow target for 2019-20 has been fixed at Rs. 1.3,50,000 crores, and till 30th November 2019, a sum of Rs 9,07,843.37 crore has been disbursed.

Government has recently initiated a comprehensive "Agriculture Export Policy" aimed at doubling the agricultural exports and integrating Indian farmers and agricultural products with the global value chains.

Industry and Infrastructure

As National Statistical Office (NSO), the real Gross Value Added (GVA) of industrial sector grew by 1.6 per cent in first half (H1) of 2019-20, as compared to 8.2 per cent in H1 2018-19. The low growth in industrial sector is primarily due to slack in manufacturing sector.

Growth of Eight Core Industries stood flat during the current financial year (April-November 2019). During the corresponding period of the previous year, these industries grew at 5.1 per cent.

India recently launched the National Infrastructure Pipeline for the period FY 2020-2025.

During the year 2018-19, Indian Railways carried 120 crore tonnes of freight and 840 crore passengers making it the world's largest passenger carrier and 4th largest freight carrier.

A dedicated SPV, Indian Railway Station Development Corporation (IRSDC) Limited has been set up to carry out modernization of railway stations.

On airport connectivity, India stood first along with 7 others (USA, China, Japan, UK, etc.) in the Global Competitiveness Report 2019 of World Economic Forum.

Power sector in India has witnessed a paradigm shift over the years India having improved its ranking to 76th in the Energy Transition Index published by the World Economic Forum (WEF).

Report of the Task Force on National Infrastructure Pipeline released on 31.12.2019 has projected total infrastructure investment of INR 102 lakh crore over next 5 years.

Services Sector

Services sector continues to outperform agriculture and industry sector growth, contributing around 55 per cent to total GVA as well as to total GVA growth.

Gross FDI equity inflows jumped by 33 per cent during April- September 2019 accounting for about two-thirds of the total gross FDI equity inflows into India during this period.

The services sector now accounts for more than 50 per cent of Gross State Value Added in 15 out of the 33 states and UTs.

Commercial services exports have risen

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steadily over the past decade to reach 3.5 per cent in 2018, twice the share in world's merchandise exports at 1.7 per cent. India now ranks 8th among the world's largest commercial services exporters.

India has launched around 5-7 satellites per year in the recent years with no failures, barring one in 2017.

Social Infrastructure, Employment and Human Development

Expenditure on social services, as a proportion of GDP, has increased by 1.5 percentage points during the period 2014-15 to 2019-20.

Total formal employment in the economy increased from 8 per cent in 2011-12 to 9.98 per cent in 2017-18.

Access to health services, inter-alia, through Ayushman Bharat and Mission Indradhanush across the country has improved.

Expenditure on social services (education, health and others) by Centre and States as a proportion of Gross Domestic Product (GDP) increased by 1.5 percentage points from 6.2 to 7.7 per cent, during the period 2014-15 to 2019-20.

India's rank in HDI has improved to 129 in 2018 from 130 in 2017, out of a total of 189 countries with 1.34% annual HDI growth rate.

Total formal employment in the economy increased from 8 per cent in 2011-12 to 9.98 per cent in 2017-18.

Budget Highlight

India budget 2020

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Direct Tax

Corporate Tax

- In September 2019, corporate tax rates for existing companies were slashed from 25% / 30% (plus surcharge and cess as applicable, ETR 34.94%) to 22% (ETR 25.17%) subject to certain conditions.
- At the same time, corporate tax rate for new manufacturing companies was introduced at 15% (ETR 17.16%), subject to certain conditions
- The Bill (the Bill) has proposed to extend benefit of concessional tax rate of 15% to companies engaged in generation of electricity
- Dividend Distribution Tax (DDT) abolished, exemption on dividend to shareholders and unitholders withdrawn
- Dividend will be taxable as an ordinary income in the hands of shareholder
- Foreign company will be subject to tax @ 40% on the dividends (treaty benefits may reduce rate to 10-15%)

Personal Tax

- NRIs / PIOs to be treated as resident in India if they are in India for a period of 120 days or more. (Earlier the threshold was 181 days)
- Number of years for qualifying as resident but not ordinarily resident reduced from 9 out of 10 years to 7 out of 10 years. Alternative condition of presence in India for 729 days or less in preceding 7 years has been removed.
- Indian citizens who are not liable to tax in any other country on account of domicile or residence or similar criteria to be considered residents in India for tax purpose and thus liable to taxation of global income in India,
- Simplified lower tax structure proposed for taxing individuals – to be applicable if taxpayer forgoes several exemptions and deductions (however, maximum benefit limited to 5% of total income)
- Employer's contribution to funds of more than Rs. 750,000 to be taxable as perquisite

International Tax

- Provisions pertaining to Significant Economic Presence, aiming to tax profits of non-residents generated out of transactions with India, deferred by 1 year
- Advanced Pricing Agreement and Safe Harbour provisions would be rolled out for attribution of profits to Permanent Establishment
- Principal Purpose Test, that benefit of treaty cannot be taken to create non-taxation or reduced taxation through treaty shopping arrangements, proposed to be incorporated in the Act
- Exemption to non-residents from filing of tax return extended to cases where income consist only of royalty or fees for technical services (earlier, this provision was applicable if income consisted of income from dividend or interest)

- Interest paid or payable to Indian branch office of foreign banks excluded from scope of Thin Capitalisation

Business Tax

- Time period for claiming 100% deduction of profits by start-ups extended from current 3 out of 7 years period to 3 out of 10 years period. Further, turnover limit of Rs. 25 Crores increased to Rs. 100 Crores.
- ESOP tax payment in case of start-ups deferred by 5 years from the date of exercise (except if transfer of shares / cessation of employment happens earlier)
- No tax audit for businesses with turnover up to Rs. 5 Crores (eligibility criteria of maximum 5% cash transactions for both revenue and expenditure)
- Due date of filing of tax return for audit cases (except transfer pricing case) extended to October 31 (from current September 30). Due date for filing tax audit continues to remain September 30.
- Due date of filing Form 3CEB preponed to October 31 (from current November 30); due date of filing of tax return in such cases remain unchanged at November 30.
- Fresh registration to be taken for every existing and new charitable or educational or medical institutions – statement to be filed for every donation received before filing of tax return. Donees to get 80G deduction based on this filing.
- Direct Tax Vivad se Vishwas Scheme Bill, 2020, is proposed as Dispute Resolution measure. No interest and penalty would be levied if disputed tax paid by March 31, 2020 (some amount of fee payable if disputed tax paid by June 30, 2020)
- Payment or provision of equivalent security for 20% demand made mandatory to seek stay of demand from ITAT
- Electronic mode of Penalty Proceedings and Appellate Proceedings (on lines of e-assessment) to be rolled out

Tax deduction and Collection at source

- TDS @ 10% on dividend distributed to resident shareholders and unitholders
- TDS @ 40% on dividend distributed to foreign company (treaty benefits may reduce rate to 10-15%) appears to be unintended but needs to be modified
- TDS @ 20% on income distributed to unit holders and dividend distributed to non-resident Indians
- Seller to collect 0.1% tax at source (1% in absence of PAN / Aadhaar) on sale of goods to a buyer whose annual consideration exceeds Rs. 50 Lakhs (annual turnover threshold of Rs. 10 Crores for seller)

- AD to collect 5% tax at source on sale of foreign currency of Rs. 7 lakhs or more for remittance outside India under LRS
- Tour operator to collect 5% tax at source on sale of any tour package for travel outside India
- TDS rate for technical services (other than professional services) reduced from 10% to 2%
- E-commerce operator to deduct 1% tax at source from income of e-commerce participant if annual sale value more than Rs. 5 Lakhs
- Liability to deduct tax at source on interest other than interest on securities extended to large co-operative societies subject to conditions
- Loan agreement period for reduced rate of TDS under Section 194LC extended up to March 31, 2023

Other amendments

- The variation allowed between stamp duty value and consideration on sale of property increased from 5% to 10% for computing profits or capital gains or income from other sources under relevant Sections
- Where the fair value of immovable property is to be adopted based on value as on April 1, 2001, the same shall not exceed the stamp duty value as on April 1, 2001
- Taxpayers' charter to form part of the Act to protect taxpayers' interest
- Time limit for approval of affordable housing projects extended from March 31, 2020 to March 31, 2021 (Time limit for obtaining sanction of affordable housing loan also extended similarly)
- Public sector banks to be allowed to carry forward accumulated losses and unabsorbed depreciation in case of amalgamations
- Penalty equal to transaction value to be levied in any case where claim is made on fake invoices
- Similar to concessional tax rates for corporates, co-operative societies shall also be offered tax @ 22%, subject to foregoing of specified exemptions and deductions. AMT shall not apply for such societies.
- Instant PAN shall be allotted to Aadhaar card holders – details to be rolled out.

Indirect Tax

- Date of issuance of Debit Note to be considered for claim of ITC as against an original invoice date.
- Claiming of ITC without invoice or bill shall be punishable offence
- Time limits and manner for availing ITC of certain unavailed credit under erstwhile law shall be prescribed
- Additional levy of Health Cess at 5% ad valorem on imported health & surgical instruments
- Imposition of safeguard duty to prevent the interest of the domestic industry
- Procedure prescribed for administration and verification of County of Origin details for imports under preferential Trade Agreement

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Corporate Tax

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New Corporate Tax Regime

Significant Reduction in Tax Rates

In order to revive the economy by inviting more manufacturing investments in India through the "Make in India" campaign, the Indian Government has rolled out lucrative corporate tax rates, especially for manufacturing companies. These steps will not only put India on the forefront in terms of being a preferred investment destination, it will also improve the sentiment of existing investors and companies with rationalised tax rates.

In September 2019, the Corporate Tax rates for existing companies were reduced from 25% / 30% (plus surcharge and cess with highest effective tax rate being 34.94%) to 22% (with effective tax rate of 25.17%). Similarly, for new manufacturing companies incorporated on or after October 1, 2019, a new regime of tax at 15% (effective tax rate of 17.16%) was also introduced. The said tax rate regimes are optional and does not allow various incentives/exemptions claimed otherwise by the companies. Detailed analysis of the new corporate tax regime is as under:

Lower Corporate Tax Rate at 22% (Section 115BAA)

As per the amendment Act, the corporate tax rate has been reduced to 22% (as opposed to current level of 25% / 30%), subject to non-claiming of specified tax incentives / deductions. Further, this reduced rate has not been limited to new manufacturing companies but is extended to all domestic companies (whether new or old and irrespective of their style and nature of business). This has significantly increased the coverage of companies which will be benefited by the reduced rate of 22%.

Companies opting for the concessional rate would not be eligible to claim Specified Tax Incentives / Deductions primarily in the nature of investment-linked or profit-linked incentives such as deduction under Sections 10AA [SEZ profits], 32(1)(iia) [Additional Depreciation], 32AD [Investment Allowance], 33AB, 33ABA, 35AD, 35CCC, 35CCD, 35(2AB) / 35(2AA) / 35(1)(ii) / 35(1)(iia) / 35(1)(iii) [Weighted R&D Benefits] or under any provisions of Chapter VI-A under the heading "C-Deductions in respect of certain incomes" [profits linked deductions] other than the provisions of Section 80JJAA.

Apart from above, any brought forward losses and unabsorbed depreciation arising on account of above items would also not be allowable while computing taxable income liable to be taxed at concessional rate of 22%. It may also be noted that with regard to brought forward unabsorbed depreciation, the corresponding adjustment shall be made in the written down value of such block of assets as on April 1, 2019.

New Manufacturing Companies (Section 115BAB)

As a direct boost to manufacturing in India, a new Section 115BAB was introduced which provides for an option to be taxed at a concessional rate of 15% for new manufacturing companies subject to satisfaction of certain conditions. The main conditions specified for availing the benefit of such Section by the manufacturing domestic companies are as under:

- The company has been set-up and registered on or after October 1, 2019 and has commenced manufacturing on or before March 31, 2023.
- The company is not formed by splitting up, or the reconstruction, of a business already in existence.
- Such companies should not avail any exemptions/ incentives under various provisions of the Income Tax Act as specified for Section 115BAA of the Act (as detailed above).
- The company does not use any machinery or plant previously used for any purpose. Used plant and machinery to the extent of 20% of total value of plant and machinery is permissible.
- The company is not engaged in any business other than business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

Non-applicability of MAT – Section 115BAA & Section 115BAB

Considering that this reduction in rate would virtually leave little difference between MAT and normal liability, it has been provided that such companies will not be eligible to MAT provisions. This comes as a huge relief to companies. Further, it has been expressly stated that unutilized MAT Credit of past years shall not be allowed to be carried forward to subsequent years, which means that such MAT Credit shall lapse when the assessee wishes to avail the option of concessional rate.

It is important to highlight that the option available to existing companies to move to 22% regime can be exercised in later years also [note that such option is not available in case of 15% regime applicable to new manufacturing companies].

It is not the case that the option must be exercised by the existing companies for FY 2019-20 (AY 2020-21) only but it can be exercised in subsequent years as well. For companies currently availing specified deductions / benefits, they will be eligible to switch to concessional rate regime after completion of the tax incentive period. However, most importantly, once a company opts for the concessional rate, it would not be possible to go back to the normal tax regime (25% / 30% tax with specified incentives / deductions).

The option will have to be exercised before the due date of filing Tax Return. Hence, existing companies should evaluate the options and choose wisely depending upon the long-term tax impact before filing the Tax Return for FY 2019-20 (AY 2020-21).

New Corporate Tax Regime

Where the company opts for the concessional rates, it will be subjected to surcharge of 10% of income-tax irrespective of the threshold of taxable income apart from 4% cess on income-tax and surcharge.

The new manufacturing company opting for 15% tax rate can only engage in the business of (i) Manufacture or production of any article or thing; and (ii) Research in relation to, or distribution of, such article or thing manufactured or produced by it. The company cannot undertake any other business activities. Further, the Act has expressly stated that any income which is neither derived from nor incidental to manufacturing or production of an article or thing, shall be taxed at the rate of 22% and no deduction or allowance in respect of any expenditure or allowance shall be allowed in computing such income. Similarly, Short Term Capital gains in the case of non-depreciable assets shall also be taxed at the rate of 22%.

The law also provides that for new manufacturing companies, once a company opts for the concessional rate of 15%, it may exercise an option to be governed by the provisions of Section 115BAA either voluntarily or in the case of non-compliance with any condition in Section 115BAB, the company shall be governed by the provisions of Section 115BAA. Factors like nature and volume of investment, nature of business will have to be factored while deciding upon selection of the option.

Further amendments by the Bill

The provision of Section 115BAA and 115BAB enabling lower regime of taxation have been amended to clarify that in addition to deduction under Section 80JJAA, deduction under Section 80M on account Inter Corporate Dividend (in view of abolition of Dividend Distribution Tax) shall also be available to such company. Further, power generation companies have also been proposed to be granted the benefit under Section 115BAB.

Dividend Taxation

Abolition of Dividend Distribution Tax

Currently, tax is levied on dividends in the form of Dividend Distribution Tax (DDT) under Section 115-O of the Act in respect of dividend declared / distributed / paid by any domestic company to its shareholders in India. Similarly, income distributed by a specified mutual fund to unit holders is subject to DDT under Section 115R of the Act. The dividend / income received by such shareholder / unit holder is exempt in their hands under Section 10(34D) and 10(35D) of the Act respectively.

Further, such DDT is levied @ 15% (plus surcharge cess) on the company distributing / paying dividends. DDT is considered to be a final tax on such dividends and hence, no further liability is cast on the recipient (except for Section 115BBDA) nor any credit in respect of the same is made available.

This model of taxing dividends was introduced two decades ago, majorly in order to smoothen administration and collection of taxes. However, this is not a very popular model globally and especially, poses multi-fold challenges to MNCs viz. challenge in getting access to treaty benefits for rate purposes and a bigger challenge of getting credit in respect of the taxes being paid. While it was an accepted fact that DDT was effectively a tax on the income, the challenges arose due to it being taxed in the hands of the distributing company rather than the recipient of income. Further, a lot of retail investors in the moderate-income group were getting affected in terms of lesser dividend inflow on account of effective rate of DDT being around 20%.

Prior to the Budget, there was a buzz that the Government would take certain steps in this direction. As anticipated, the Government has introduced various amendments in the Bill whereby, India now moves back to the classical system of taxing dividends i.e. taxing the same in the hands of the recipient. Accordingly, any dividends declared or distributed on or after April 1, 2020 would now be taxable in the hands of the recipient like any other income and not the distributing company at the rates as may be applicable to such recipient. This move will surely create a positive sentiment amongst MNCs which were hitherto in a dilemma and were sceptical about treaty benefits not being allowed on such income though in principle, it was the income that was being taxed.

The following corresponding changes have also been proposed in the Bill:

- Provision of Section 115-O and 115R, 10(34D) and 10(35D) shall not applicable in respect of dividends declared / distributed / paid on or after April 1, 2020.
- In order to ensure that there is no cascading effect in taxing of dividends, Section 80M has been re-introduced whereby any domestic company receiving dividends from any other domestic company will get a deduction

from dividend income to the extent of dividend distributed by it till one month prior to the due date of filing of tax return. This is more or less in line with the erstwhile provisions (as they existed before introduction of Dividend Distribution Tax).

- On a finer reading, one could see that while the provisions of Section 115-O provided for set off of dividends received from overseas subsidiaries (for removing cascading effect), Section 80M provides for deduction only in respect of dividend transactions between domestic companies. Accordingly, re-distribution of foreign dividend received by a domestic company shall not be eligible for this deduction. Hence, tax on such foreign dividend is required to be paid both by the domestic company and its shareholder.
- Since now, the dividend is taxable in the hands of shareholders / unit holders, the provision of Section 115A is amended so as to tax such dividend in the hands of non-resident recipient @ 20%. Further, in case of resident shareholder, such dividend is taxable as per the applicable slab rate.
- Section 115BBDA that currently taxes dividends in the hands of non-corporate shareholders in addition to DDT will not apply to such dividends as the same would be taxed totally in the hands of the recipient of income.
- Presently, expense incurred for earning exempt income is disallowed under Section 14A. As dividend income is an exempt income, there have been several litigations around allowance / disallowance of expenditure in connection with dividend income. With the proposed amendment regarding taxability of dividend income, it was rational to provide for allowance of expenditure incurred in relation to the same.
- However, a very surprising amendment has been brought in regarding allowance / disallowance of expenditure in connection with dividend income. It has been proposed that no deduction shall be allowed from the dividend income under Section 57 other than interest expenditure. Further, such deduction of interest has been limited to 20 per cent of the dividend income. This will pose a hurdle as while the income from dividends are now fully taxable on one hand, only limited interest expenditure in respect of the same would be allowed. The amendments should ideally leave no room for any disallowance under Section 14A.
- It would be interesting to see how tax authorities interpret and apply the provisions of the new Section 57 for disallowing expenses (other than interest) for earning dividend income. Also, whether the balance interest expenditure would be directly allowable as deductible business expenditure is to be seen.

- The Bill provides for deduction of tax at source @ 10% in respect of dividend payments with a meagre threshold of Rs. 5,000. Similarly, the exclusion provided in Section 195 for dividends that have suffered DDT (for non-resident payments) has now been removed and tax will be withheld at the rates specified in Part II of Schedule I to the Finance Act or the treaty rates, as may be applicable subject to conditions of providing necessary documents and details like Tax Residency Certificate, Form 10F, etc.
- Here, it appears that no specific mention is made in Part II of Schedule I to the Bill for withholding rate of tax on dividend income of non-resident company or non-resident non-Indians. Consequently, unless the tax treaty benefit is claimed, such dividend is subject to withholding tax of 40% (since tax shall be required to be withheld in residual category). However, we believe that since, such dividend is taxable in the hands of non-resident shareholder at a maximum rate of 20%, necessary amendment is required to be made in Part II of Schedule I at the time of passing the Bill so as to synchronize the tax rate with withholding tax rate.
- It is to be noted that necessary amendment has been made in Section 196A of the Act dealing with TDS on dividend paid to a non-resident so that such mutual fund is required to withhold tax @ 20% for making payment to non-resident unit holders. Accordingly, we believe that such omission with respect to dividend for non-resident shareholders should be corrected in due course.
- Similar amendments have been made in respect of dividends to be paid to unit holders.

Considering the fact that dividends that hitherto attracted taxes @ 20% (approximately) plus an additional tax of approximately 10% plus surcharge and cess under 115BBDA in case of non-corporate shareholders will now be taxed at normal rates. From an overall tax cost and cash flow perspective, it may have a significant negative impact in case of individual shareholders falling in the highest bracket (more than Rs. 5 crore) because of the high surcharge rate being applicable to the full amount of tax on dividends (say 30% being the highest tax bracket) as against on 10% under Section 115BBDA (shown below).

Particulars	Existing	Proposed
Profits distributed	121	121
DDT for company	21	-
Dividend received	100	121
DT for individual	14	52
Net receipt	86	69
Net Tax	35	52
Total tax as a % of profits distributed	29%	43%

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This could also be true in other cases albeit the difference could be lower. In case the shares are held by a firm or LLP, then also the tax implications could be lower.

The change in the methodology of taxing dividends could also significantly impact Indian outbound groups which have multi-tier structure and taking benefit of the provisions of Section 115-O which may not be available now and may increase their effective tax cost.

Buyback

Buyback of shares continue being taxed in the same manner. Tax on buyback is 23% of the profits distributed. This will not be regarded as capital gains and no benefit of indexation or investment in eligible securities will be allowed.

MNCs may want to evaluate possibility of claiming the beneficial rate of the treaty to reduce the DDT rate (even for past open years).

Indian promoters will have to evaluate the following from a tax and cost optimisation perspective:

- Repatriation strategy – there are different ways of extracting profits from a company
- Entity – LLP v. company should be examined
- Holding entity – Instead of holding shares directly, whether shares can be held by any other entity mode

The above would also be relevant considering the increased burden on the personal taxation.

Personal Tax

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Striking the Right Balance

New Optional Personal Taxation Regime

The Bill has introduced New Personal Taxation regime by way of introduction of Section 115BAC which shall be applicable from AY 2021-22 which provides an option to individual & HUF category taxpayers to pay taxes at lower rates specified in said Section subject to fulfilment of certain conditions including not availing certain deductions, exemptions as mentioned in Section 115BAC. The following table shows the lower tax rates as per new regime:

Total Income (Rs.)	Rate of Tax *
Up to 2.5 Lacs	Nil
From 2.5 Lacs to 5 Lacs	5%
From 5 Lacs to 7.5 Lacs	10%
From 7.5 Lacs to 10 Lacs	15%
From 10 Lacs to 12.5 Lacs	20%
From 12.5 Lacs to 15 Lacs	25%
From 15 Lacs	30%

* The above rates shall further subject to surcharge and cess as applicable considering the level of taxable income

If taxpayer being Individual or HUF opts for above lower rates of taxation under Section 115BAC, the same would be available only when the assessee forego following exemptions / deductions / benefits available to him:

(i) No exemption for following allowances

- a. Leave Travel Concession - Section 10(5)
- b. House Rent Allowance – Section 10(13A)
- c. Certain actual expenditure-based allowance – Section 10(14) (except specified allowances like Transport Allowance, Conveyance Allowance and Tour Allowance)
- d. Allowances for income of minor – Section 10(32)
- e. Allowance given to MP & MLAs – Section 10(17)

(ii) Standard Deduction under Section 16

(iii) Interest on borrowed capital for purchase or construction of house under Section 24(b) in respect of self-occupied property

(iv) Deduction under Section 10AA for SEZ Units

(v) Business deductions

- a. Additional Depreciation under Section 32(1)(iia)
- b. Deduction for Investment in plant & machinery in notified backward area under Section 32AD
- c. Deduction in respect of business of Tea, coffee or rubber development under Section 33AB
- d. Deduction in respect of site restoration funds under Section 33ABA
- e. Deduction for donations for or expenditure incurred for scientific

research under Section 35(2AA) or under Section 35(1)(ii), 35(1)(iia), 35(1)(iii)

f. Deduction under Section 35AD for specified business

g. Expenditure on agricultural extension project under Section 35CCC

(vi) Deductions under Chapter VIA

a. Investments based deductions under Section 80C

b. Contribution to National Pension Scheme (NPS) under Section 80CCD(1) & 80CCD(1B) [except 80CCD(2) being employer's contribution to NPS]

c. Medical Expenditure / Mediclaim Insurance Premium etc under Section 80D

d. Interest on educational loan under Section 80E

e. Housing Loan Interest under Section 80EEA

f. Interest on Loan for purchase of Electric Vehicles u//s 80EEB

g. Donations made under Section 80G

h. Other deductions under Section 80CCC, 80DD, 80DDB, 80EE, 80GG, 80GGA, 80GGC, 80-IA, 80-IAB, 80-IAC, 80-IB, 80IBA etc. (except deduction under Section 80JJAA)

(vii) Exemption for Free food and beverages provided to employees through meal vouchers.

(viii) Set off of Carried forward losses or depreciation loss computed in earlier years attributable to item (v) above

(ix) Set off of Carried forwarded losses under the head "Income from House Property"

(x) Exemption or deduction provided for allowance or perquisites under any other law for time being in force.

The benefits of lower rates of taxes under Section 115BAC is further subject to following conditions:

(i) Once an assessee opts for new personal taxation regime, he would not be entitled for carry forward of losses attributable to deductions mentioned in (v) above as well as any losses under the 'Income from House Property'. However, in respect of the amount of unabsorbed depreciation relating to additional deprecation as on April 1, 2020, an assessee would be entitled to make adjustment in value of written down value of block of assets as on 0April 1, 2020 in a manner to be prescribed by tax authority in this regard. Such benefit is available only when such concessional rate tax regime has been opted by an assessee from AY 2021-22.

(ii) In case of Individual or HUF having business income, normal depreciation shall have to be computed at rates as may be prescribed by tax authority in this regard

(iii) The concessional rate shall not apply unless option is exercised by the individual or HUF in the form and manner as may be prescribed

a. In case of Individual or HUF who has no business income, at the time of filing of return of income

b. In case of individual or HUF having business income, on or before filing of return of income and once the same is opted, it shall automatically apply to subsequent years

(iv) The option exercised to opt for Section 115BAC by Individual or HUF having business income can be withdrawn, only once, in any year after the year in which it was exercised. But once withdrawn, the same would not be available again to such individual or HUF for future years. However, in case such Individual or HUF ceases to have business income in any subsequent year, he or it may opt for Section 115BAC at the time of filing of return of income.

If an Individual or HUF who has opted for provisions of Section 115BAC in any AY and subsequently it is found that such Individual or HUF has not satisfied any of the above mentioned conditions for claiming lower rate of taxes, such person would be subject to tax as per rates provided in Finance Act 2020 and tax shall be computed as if such person has not exercised option under Section 115BAC. Further, in case of an Individual or HUF who is having business income has failed to satisfy conditions mentioned above, he or it would not be entitled to claim benefit under Section 115BAC for any subsequent AY.

Also, necessary amendment has been made in Section 115JC of the Act to provide that the provision relating to 'Alternate Minimum Tax' shall not apply to such Individual or HUF having business income and corresponding provisions for credit of taxes paid under Section 115JD shall not be applicable.

Tax Residency for Individuals/HUF

Citizenship based Tax Residency

Global Non-Resident Indian Citizens to be regarded as Tax Resident

Under provisions of the Act, tax liability of Individual is decided basis their tax residency under the Income tax Act. A person who is tax resident of India in any year is subject to tax on global income whereas person who is non-resident is subject to tax only in respect of income which accrues or arises in India or deemed to accrue or arise in India. The existing provision of the Act provides that a person shall be regarded as resident basis period of his presence in India in current year as well as preceding years in certain cases. The Bill proposes to add another criterion whereby every Indian Citizen shall be regarded as tax resident of India if he is not liable to tax in any other country or territory by reason of his domicile, or residence, or any other criteria of similar nature.

The existing law of tax residency makes possible for Indian Citizen to manage their tax residency in a way that they end up not paying taxes anywhere in the world. The amendment is proposed to prevent tax abuse and to address issue of stateless persons who are not paying taxes in any jurisdiction by avoiding tax residency including by means of avoiding period of stay in India.

The above amendment has raised concerns over taxability of Indian Expats settled abroad in countries having no levy of income tax and questions have arose that whether by way of the above amendment, would such Indian Expats be treated as Resident in India and be liable to pay tax in India on the remuneration earned in such countries. If a person is regarded as resident of India under the Act and also he claims to be resident of any foreign country, he can take recourse to the treaty provision, if any, available to establish that he is resident of such foreign country (if possible to claim as per the tax treaty provision) and in that situation his income in such foreign country if not sourced from India is not taxable in India. However, in such case he needs to obtain a tax residency certificate from the tax authority of such foreign country to access the tax treaty for the same.

In view of highly litigative interpretation arising on the above proposed amendment and considering the concern of large population of Indian Citizen working abroad (for example in Middle East) wherein no tax is payable, on the immediately next day of the announcement of the Bill, it has been clarified by the Government by way Press Release dated February 2, 2020 that such proposed provision is not intended to include in the tax net of those Indian citizen wo are bonafide workers in other countries. It has been clarified by the Government that necessary clarification, if required, shall be incorporated under the law to provide that Indian citizen who become tax resident of Indian by virtue of this amendment in the Act, income earned by such individuals outside India shall not be taxable in India unless such income is derived from any Indian business or profession.

While the Government has tried to clarify their position, it appears that it has rather created more confusion. The intention was to exclude expatriates genuinely working abroad in countries which levy no tax on income. However, the said clarification actually narrows down the taxability significantly.

It seems that the government wanted to tax those Indian citizens who are merely residing in tax heaven country and doing no activity and therefore, avoiding taxation by virtue of being global non-residents.

Tax Residency for Individuals/HUF

However, the above clarification which narrows the scope of the amendment significantly would in effect, leave the income intended to be taxed still out of the tax net. What is stated above is only issued through press-release and therefore, closer look would be required to the amendment proposed by the government at the time of passing of the Bill. Any meagre drafting of such crucial provision shall create either a possibility of high level of tax litigation or create a possibility of creation of double non-taxation, either of which is not desirable.

Indian Citizen or Person of India Origin

As per the existing provisions of the Act, a 'Person of India Origin' (means a person who himself / herself or either of his/her parents or any of his / her grandparents born in undivided India) or Citizen of India visit India for a period of 182 days or more in a year and his / her stay in preceding 4 previous years exceeds 365 days, he / she shall be regarded as resident for tax purpose.

Considering the evolving ways of doing business, the Government considers 182 days as too lenient criteria which could lead to misuse of such provision and accordingly the Bill proposes to reduce such short stay residency exemption from 182 days to 120 days. Thus, Indian Citizen or Person of India Origin who stays in India for period of 120 days or more in a year from year 2020-2021 onwards and his / her stay exceeds 365 days in preceding 4 years, he shall be regarded as 'resident' for tax purpose. The proposed amendment would likely impact taxation in case of Indian Citizen or Person of India Origin who visit temporarily for shorter duration where stay is likely to exceed 120 days.

Widening the meaning of 'Not Ordinarily Resident'

Under the Act, while Individual or HUF who is 'ordinarily resident' is subject to tax on global income, Individual or HUF who is 'not ordinary resident' within meaning of Section 6 of the Act is not exposed to tax on income which accrues or arises to him outside India unless such income is derived from a business controlled or profession set up in India. To that extent, global income of such resident but not ordinary resident is not taxable in India.

The existing law provides that the Individual or HUF is said to be 'not ordinarily resident' where such individual or manager of such HUF is non-resident in 9 years out of 10 preceding years or where he has stayed in India for period of 729 days in preceding 7 years.

The Finance Bill Proposes to amend said conditions where Individual or HUF shall be considered as 'Not Ordinarily Resident' where such Individual or manager of HUF is non-resident in 7 years out of 10 preceding years. The condition of aggregate period of stay of 729 days in 7 years is now done away with. The amendment has been proposed so as to ensure non-resident are not exposed to tax on global income and faced with compliance requirements merely basis their short stay in earlier years.

Other Amendments

Combined Upper limit for Tax Free Employer Contributions

Under existing provisions of the Act, contributions made by employer to following funds in excess of limit specified in table below is taxable in the hands of employee.

Name of Funds	Value up to which Contribution is not taxable
Recognized Provident Fund	12% of Salary
Superannuation Fund	Rs. 1,50,000 (excess taxable as perquisite)
National Pension Scheme under Section 80CCD(1)	14% of Salary in case of Government employer and 10% of Salary in case of other employer

However, there is no fixed absolute monetary limit, exceeding which such contributions would taxable in the hand of employee. The Bill proposes to amend clause (vii) of Section 17(1) which defines the term salary and thereby taxing any contribution made by employer in above mentioned cases, if the same exceeds by Rs. 7,50,000.

Consequently, the Bill also proposes to amend definition of salary so as to include income earned in previous year by way of annual accretion by way of interest, dividend etc. in respect above mentioned funds in relation to employer's contribution considered taxable in view of proposed amendment discussed above.

Section 80EEA - Deduction of Housing Loan Interest

The Finance (No.2) Act, 2019 inserted Section 80EEA to provide for a deduction in respect of interest on loan taken from any financial institution for acquisition of an affordable residential house property. The deduction allowed is up to Rs.1,50,000 and is subject to certain conditions. One of the conditions is that loan has been sanctioned by the financial institution during the period from April 1, 2019 to March 31, 2020.

The proposed amendment intends to allow the benefit of claiming deduction for interest paid on affordable housing loan under Section 80EEA to the loan facility sanctioned in FY 2020-21. This is aimed at furthering the much-needed boost to the real estate sector and triggering the increase in demand for affordable housing. The demand in the real estate sector will also in turn boost the economy.

This amendment will take effect from April 1, 2021 and will, accordingly, apply in relation to AY 2021-22 and subsequent AYs.

Deduction for donation under Section 80G & 80GGA

Currently an assessee can claim the deduction for any donation made to an institution approved under Section.80G/80GGA on the basis of receipt issued by such approved institution. In order to curb the practices of claiming such deduction by way of bogus donation, the provision of Section 80G/80GGAA has been amended to provide that no such deduction shall be allowable only on the basis of information relating to such sum furnished by such institution to the tax authority subject to verification electronically. Further, the donee is required to issue certificate to the donor for receipt of donation electronically.

Necessary amendment has been made under the Act to direct such institution to furnish the information of donee and receipt information. Further non-furnishing of such information within specified time limit shall attract levy of fee as well as levy of penalty as per the newly inserted provisions of Section 234G and 271K of the Act.

International Tax

India budget 2020

Striking the Right Balance

Significant Economic Presence

Change for determining Taxable Presence of Foreign Companies in India

The provisions of Significant Economic Presence ("SEP") were introduced by Finance Act 2018 w.e.f. April 1, 2019 through insertion of Explanation 2A which clarified that SEP of a non-resident would constitute "Business Connection" in India and thereby income of any non-resident through or from a SEP shall be deemed to accrue or arise in India. It further defined the term SEP to include:

(a) Transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeded prescribed amounts; or

(b) Systematic and continuous soliciting of business activities or engaging in interaction with prescribed number of users in India through digital means

While the intent of introducing SEP was to tax income being generated from electronic transactions, the way language of the law was drafted (clause (a) above), led to an inference that the Government wishes to even capture transaction of physical movement goods and services provided some activities were "carried out" in India. There was an understanding that Explanation 2A was to be read along with Explanation 1(a) to section 9(1)(i), thereby requiring attribution of profits to a business connection only to the extent such operations were being carried out in India.

The Government had thereafter rolled out "Profit Attribution Rules" for public consultation which haven't yet seen light of the day. A reading of the draft rules indicated that SEP provisions read with the rules could bring within the ambit of tax, even transactions wherein the non-resident did not have any operations in India, subject to the non-resident crossing the prescribed limits of value of transactions / users. In absence of finality of these rules, there was no clarity as to how the provisions of SEP would come into play.

Vide the Bill, it has now been proposed to defer applicability of SEP provisions to AY 2022-23, i.e. FY 2021-22, considering that the discussion on the same at international forum is still going on and as a result, the thresholds / parameters under section 9 of the Act have yet not been rolled out.

While implementation of SEP provisions have been deferred, interestingly, the Government has already replaced the meaning of SEP by way of a new Explanation 2A with the following changes which expand the scope of SEP and thereby, that of non-resident taxation:

(a) In the aforementioned clause (a), reference to transaction being carried out "in" India has been replaced with transaction being carried out "with any person" in India, thereby expanding the scope of SEP

(b) In the aforementioned clause (b), reference to "through digital means" has been removed.

As discussed earlier, there was a confusion / understanding earlier as to whether clause (a) of Explanation 1 to section 9(1)(i) would eed to be fulfilled in order to apply SEP provisions. The said explanation provided that in case of a business of which all the operations were not carried out in India, the income of the business deemed under the said clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India. In order to provide clarity to such a situation, it has now been provided that the said clause shall not apply to SEP provisions. The purpose behind bringing about a new Explanation / meaning for the term – SEP while the said provision is being deferred is unclear. However, one can assume that the object could be of Government wanting to give time to the taxpayers to properly understand the provisions and do not wish to hit them hard out of surprise.

These amendments shall have far reaching effects in the sense that it would completely change the way taxation of non-residents was understood, whereby focus is being completely shifted to market / customers. For example, income of a foreign company by selling goods to an Indian party directly from outside India could also be considered as deemed to accrue or arise in India if the prescribed thresholds are met. This goes against the otherwise settled principle of taxing business income of a non-resident only to the extent of activities being carried out by such non-resident in India.

While the provisions of SEP have been deferred, the Bill proposes expansion of the current Source Rule from AY 2021-22 by providing for an Explanation 3A to cover income from the following transactions within the meaning of income attributable to operations carried out in India (Explanation 1(a) to section 9(1)) and also within the meaning of income attributable to transactions or activities relating to SEP (Explanation 2A to section 9(1) with effect from AY 2022-23:

(i) Income from such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India;

(ii) Sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India;

(iii) Sale of goods or services using data collected from a person who resides in India or from a person who uses internet protocol address located in India

This amendment would further widen the scope for taxability of non-residents wherein importance is given to location of customer / internet protocol address and / or location of the persons whose data is being collected. Any transaction that involves any of the above factors could be taxed under the proposed provisions. As discussed earlier, while implementation of SEP has been deferred, the expansive Source Rule in the form of Explanation 3A would apply from AY 2021-22 and hence, MNCs that have a strong presence of customers / advertising target in India will have significant implications.

Treaty impact

Tax Treaties follow the concept of Permanent Establishment (PE). PE is generally a narrower concept than the concept of Business Connection. Now, the concept is intended to be further increased due to introduction of SEP. The same is not covered under the current PE definition. So, without expansion of PE definition, impact of SEP may not be significant if provided Treaty provisions are applicable.

Attribution of Profits in Safe Harbour Rules and in Advance Pricing Agreement

Transfer Pricing deals with the arm's length pricing of the transactions between related parties – Associated Enterprises (AE). Further in order to bring more certainty and reduce litigation, the taxpayer has an option to opt for either safe harbour or enter into an Advanced Pricing Arrangement ('APA') as provided under Section 92CB and Section 92CC of the Act respectively.

Under safe harbour provisions, there are certain pricing methodology which has been laid out for determining arm's length price under Section 92CB of the Act. If an eligible taxpayer opts for such method, the income-tax authorities shall be bound to accept the transfer price declared. No adjustments can then be made. The taxpayer also has the option to go to the tax authority and mutually determine the transfer pricing under Section 92CC of the Act. The tax department cannot challenge this in future. This arrangement is APA.

Under the existing provision of the above Sections, the same are applicable only for determining arm's length price and not for the purpose of determining income which is accruing or arising to a business connection in India or from property in India or through or form any assets, source of income or through transfer of capital asset situated in India as referred under Section 9(1)(i) of the Act. E.g if a non-resident has business connection in India, any income generated by such non-resident cannot be subject to the provision of transfer pricing and thereby provision of Section 92CB and 92CC shall not be applicable.

Considering this, the Bill has now empowered the tax department to compute the income as attributable to above transaction under the safe harbour and APA. Since there is no change in provisions relating to transfer pricing, it appears that currently the transfer pricing provision shall not be invoked to determine income attributable to business connection or transaction as referred in Section 9(1)(i) of the Act.

These provisions are a welcome change and will go a long way to bring certainty to the non-residents opting for safe harbour or APA.

Transfer Pricing

Due date of filing Transfer Pricing Report by Accountant

Every assessee who has entered into an international transaction or a specified domestic transaction with an associate enterprise is obligated to obtain and furnish a report from an accountant in Form 3CEB. As per the provisions of Section 92E read with Section 92F of the Act, the due date of furnishing such report was same as the due date of furnishing of return of Income under Section 139(1). Thus, currently, the assessees to whom the provisions of Transfer pricing apply are required to furnish their return of income as well as Form 3CEB on or before 30 November of the AY.

Vide the Bill, the Finance Minister has proposed to segregate the events of furnishing of audit reports and filing of return of income. Considering this approach, the due date of furnishing such accountants report as per Section 92E is now proposed to be amended to one month prior to the due date of furnishing of return of income. Hence the assessees who have entered into international transactions with their associate enterprises would be required to furnish Form 3CEB by October 31 and the return of income would have to be filed before November 30 of the AY.

Other Amendments

No Access to Treaty for Tax Avoidance

Section 90 and 90A grants the access to tax-treaties. Tax treaties have been given a higher status as compared to the domestic tax law and has the power to grant relief from the tax burden imposed under the Act.

Taxpayers have been structuring their holding structures to take the maximum benefit out of treaty. This even involves having an entity in a jurisdiction with no substantial activities, merely to claim the treaty of that jurisdiction. Various courts, including the supreme court have said that such measures are legitimate form of tax-planning. However, the global as well as the Indian scenario has changed considerably in the last few years. The OECD is actively involved in ensuring that the tax is paid where the operations are present, and not where the entity is located. India too has laid out multiple measures to curb tax-planning and avoidance strategies, like the General Anti-Avoidance Regulations.

The proposed amendment is just a further step towards tightening the curbs imposed. Section 90 and 90A that grants the treaty benefits, will have the following wording **(the bold portion)**:

90. (1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India,—

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, ***without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory)*** or

Multilateral Instruments (MLI) is a global effort by OECD to curb tax-avoidance strategies and one of the essential component of its Base Erosion & Profit Shifting (BEPS) Project is to add the portion in highlighted text in preamble of each of the tax treaties to serve as guiding force in interpreting a tax treaty. The Vienna Convention requires the treaty to be interpreted in accordance with the purpose and objective of such treaty and therefore with inclusion of the above text in preamble would authorise tax authorities to deny treaty benefit in cases where the arrangements were aimed at tax evasion through treaty shopping.

It has been argued that the Government needed the authorization u/s. 90 / 90A to amend treaties to include such text in the preamble of the treaty and this amendment authorizes the Government in this regard and the stated objective of the amendment also conveys this.

However, there is possibility of different set of interpretation in this regard. Currently, MLIs have been effective in respect of limited Indian treaties. In order to overcome the constraints in achieving the said objective through MLI, the Government has proposed to introduce the said text in the statute granting the right to enter into Tax Treaty to the Government. With the above amendments, tax authorities may argue that their authorization to enter into tax treaty has limitation towards any tax evading structures and therefore even if the tax treaty provided some benefit, by virtue of limitation of authorization such treaty benefit should be denied. The correct interpretation would be known to public at large only once the judiciaries give their verdict on any issue related to this amendment.

Exemption to non-residents from filing return of income

The current provisions of the Act exempt non-residents from filing return of income in India if their total income only includes dividend and / or interest income; provided that tax has been deducted on such income as per the provisions of the Act. These provisions are proposed to be amended to include non-residents whose total income includes income by way of royalty and fees from technical services; provided that tax has been deducted as per the provisions of the Act.

Further, the provisions have also imposed an additional condition that tax should be deducted as per the provisions of the Act and not lower than that. In view of this, if concessional treaty benefits are availed, the benefit of exemption from tax return filing would not be available.

It may also be noted that these provisions do not relieve the foreign companies from furnishing Form 3CEB (Transfer Pricing report) in India on such income.

Thin Capitalization vis-à-vis borrowing from a Non-Resident Bank having a PE in India

The Finance Act, 2017 introduced Section 94B vide which thin capitalisation rules for limiting deductibility of interest expenses arising on debts from associated enterprises were incorporated within the Act. The provisions of thin capitalization are aimed at discouraging claiming of excessive deductions on account of interest payments by highly leveraged companies, who are financed by debt rather than equity by its associated enterprises to curb base erosion issues. The Section provides that interest claimed as deduction in computation of profits and gains of business or profession of the assessee, being an Indian company or a permanent establishment of a foreign company on debts from associated enterprises ('AEs') shall be restricted to maximum of 30% of Earning before depreciation interest taxes and amortization ('EBDITA').

The Section further provides that if the debt is issued by the lender which is not associated but an associated enterprise provides implicit or explicit guarantee to such lender then such debt is deemed to be considered as have been issued by associated enterprise.

Therefore, the provisions indirectly also cover the case wherein loan is taken from Indian Branch of the foreign bank and such loan is guaranteed by non-resident Associated Enterprise of the Company. In such a scenario, it is argued that since the debt is issued by the lender, which is guaranteed by AE, the provisions of Section 94B shall be applicable. However, the basic principle of Section 94B was to remove base erosion of profits. In the given case, since the interest would be payable to the Indian Branch of the foreign bank, the interest would be taxable in India and thus there would be no scope of base erosion.

Further, because of the definition of AE, which includes any enterprise from which the Indian enterprise has borrowings amounting to more than 50% of the book value of the assets, even the Indian branch of foreign banks from whom an Indian company might have borrowed loan are covered by these provisions.

Since the objective of these provisions is not to disallow genuine interest payments by an Indian company and also to adhere to the principle of Base Erosion, the Bill proposes to amend the provisions to carve out interest payable on borrowings from PE of non-residents bank by an Indian Company.

This sub-Section is proposed to be inserted with effect from April 1, 2021.

Relaxation of condition for not creating business connection in India for onshore fund

Section 9A deals with an investment fund which is located overseas and makes investment in India (Onshore Fund Management). The said Section grants exemption from Indian tax on business, by shielding it from the business connection criteria if it fulfils certain conditions.

One of the conditions for such exemption is that the aggregate participation or investment in such fund by Indian residents should not exceed 5% of the corpus. The Bill proposes to relax this condition by providing that for computing the limit mentioned, the contribution of funds up to Rs. 25 crores by the fund manager will not be considered for the first 3 years. This enables the fund manager to get an impetus to the fund in its initial period.

Further another existing condition for such exemption is that the monthly average of corpus of the fund shall not be less than Rs. 100 crores. The limit in case the fund is created or incorporated in a financial year shall be Rs. 100 crores or more at the end of period of six months from the last date of the month of its establishment or at the end of such financial year whichever is later. In such case the later the fund is created in a financial year, it gets less time to manage its fund to have corpus of Rs. 100 crores. Accordingly to provide a common time period, it has been provided that any fund which is created or incorporated shall require to achieve such corpus value within the period of 12 months form the end of the month in which such fund was established or incorporated.

Person responsible for complying with TDS provisions for non-residents

While the withholding tax provisions apply even to non-residents, the existing provisions of section 204 that provide a meaning to the phrase "person responsible for paying" do not contain an explicit provision as to who should be considered as "person responsible for paying" in case of a transaction that involves a non-resident payer.

In order to provide clarity, the Bill proposes an amendment to section 204 thereby now explicitly providing that in the case of a person not resident in India, the following shall be considered as "person responsible for paying":

a. person himself; or

b. any person authorised by such person; or

c. the agent of such person in India including any person treated as an agent under section 163.

Accordingly, the obligations as prescribed under the Act for withholding of taxes and related implications / consequences can now fall upon any of the persons mentioned above. For example, under section 163, any person from or through whom the non-resident is in receipt of any income is considered as an agent of the non-resident. Accordingly, if such a non-resident has any transaction of payment in India and if withholding tax provisions apply in such cases, the agent could be held responsible for any compliances or non-compliances in respect of such withholding tax obligations.

It is interesting to note that even prior to this amendment, section 204 contained a residuary provision whereby in case of credit or payment of any other sum chargeable to tax in India, the "person responsible for paying" was provided to mean either the payer himself or in case of a company, the company or its principal officer.

From the above, one could infer that prior to the amendment, in case of a non-resident payer, only the payer could be held responsible for withholding tax obligations. However, with the proposed amendment, even the agent, or authorised person could be held responsible for such obligations. This could be a conscious call on the part of the Government to track situations of non-compliance of withholding tax provisions by focussing on persons authorised in India by such non-residents. However, if that be the case, one may argue that this addition to the meaning of "person responsible for paying" could have been made to the existing residuary provision rather than providing for a new clause altogether and that a new clause means that earlier, there were no provisions to identify "person responsible for paying" when the payer was a non-resident.

In any case, the amended provisions would help counter non-compliance with withholding tax provisions and provide ease in tracking the persons responsible for the same.

Business Tax

India budget 2020

Striking the Right Balance

Startup Taxation

Rationalization of Startup Incentives

Amendment in tax holiday criteria

The existing provisions of Section- 80-IAC of the Act provide a tax holiday of the profits and gains derived from an eligible business by an eligible start-up for a period of three consecutive AYs out of seven years if it is incorporated on or after April 1, 2016 but before April 1, 2021 and its total business turnover does not exceed Rs. 25 crores for the year in which the deduction is claimed.

With a view to incentivize the eligible Start-ups, the threshold of turnover to qualify as a start-up is increased to Rs. 100 crores from the existing Rs. 25 crores. This would result in a greater number of companies / LLPs being qualified as a start-up and accordingly will be eligible to claim various tax benefits under the Act. Further, the eligible period is extended to 3 consecutive years out of 10 years as against 3 consecutive years out of 7 years as per existing provisions. This would result in giving additional time and flexibility to start-ups to claim the tax benefits conferred under Section 80-IAC.

Accordingly, start-up shall be eligible for tax holiday for a period of 3 consecutive AYs out of 10 years beginning from the year in which the eligible start-up is incorporated and the total turnover of its business does not exceed 100 crore rupees in the previous year for which the deduction is claimed. Such extension of period for claiming the deduction along with the increased limit of turnover shall promote and encourage start-ups.

This amendment will take effect from April 1, 2021 and will, accordingly, apply in relation to the AY 2021-2022 and subsequent AYs.

Deferred Taxation of ESOP issued by eligible Start-ups

In case of start-up as defined in Section 80-IAC of the Act, issuance of sweat equity (ESOP) is considered as very important consideration for remuneration to attract and retain best talent in start-up. Presently the value shares allotted to employees under ESOP either at free of cost or at concessional rate shall be treated as perquisite under Section 17(2) of the Act and the value of such shares as determined under Rule 3(8) on the date of exercise of the option less any amount recovered from employee shall be taxable as salary in the hands of the employee at the time of allotment of such shares.

The tax on perquisite is accordingly required to be paid at the time of exercising of option which may lead to cash flow problem as this benefit of ESOP is in kind. In order to ease the burden of payment of taxes by the employees of the eligible start-ups or TDS by the start-up, now the law is proposed to be amended to defer the payment of taxes on such prerequisite. Now the Start-up can deduct and pay the tax under Section 192 of the Act on the value of such perquisite within 14 days of earliest of any of the following events:

- after the expiry of forty-eight months from the end of the relevant AY; or
- from the date of the sale of such specified security or sweat equity share by the employee; or
- from the date of which the assessee ceases to be the employee of the person

However, the tax is required to be computed on the basis of rates in force of the financial year in which the said specified security or sweat equity share is allotted or transferred.

Similar amendments have been carried out in Section 191 (for assessee to pay the tax direct in case of no TDS) and in Section 156 (for notice of demand) and in Section 140A (for calculating self-assessment).

These amendments shall be applicable in respect of perquisite which is chargeable to tax in the hands of the employee in AY 2021-22 and onwards.

The above measure is aimed to encourage employment and enabling the availability of skilled and technical manpower to the Start-up and also give sufficient space to such Start-up to grow. These measures would ensure deferment of the taxation of the ESOPs in the hands of the employees of the eligible start-up and thereby reduce hardship to the employees as well as the eligible start-up in respect the said ESOP issued by the start-up. The aim is to encourage incentivizing schemes by the eligible start-up so that best available manpower is available.

Business Deductions

Deduction in respect of donations to Scientific Research or Rural Development

The existing provision of Section 80GGA provides for deduction of donation paid to for scientific research or rural development. To curb the cash transactions, the Bill proposes to reduce the limit of cash donation from Rs. 10,000 to Rs. 2,000.

The Bill also proposes to insert new explanation in sub-Section 2A which restricts the claim of deduction under Section 80GGA in the return of income for any AY for donation paid by the Assessee on the basis of the information of donation furnished by the donee to the Income Tax Authority.

This amendment will be effective from June 1, 2020.

Expenditure on Scientific Research

The Income tax Act provides that weighted deduction to the donor under Section 35 (ii) and (iii) shall be available even if the approval granted to such eligible association, university, college, or institution is subsequently withdrawn after the payment is made.

The Bill proposes to amend the above provisions by providing similar relaxation to the donors in case the donation is made to an eligible company registered under Section 35(iia) of the Act for scientific research.

Further, in order to monitor the eligibility of approval provided to notified research associations, university, college, institutions or companies under Section 35(ii) or (iia) or (iii) of the Act, it has been proposed that their eligibility shall be withdrawn unless such entities make an intimation in the prescribed form and manner to the income tax authorities within 3 months from the date on which this proposal would come into force. In this connection, the income tax authorities would issue a notification which shall grant eligibility to such entities for a period of five consecutive AYs beginning from the 1st of April 2020.

Further, the government's intention of cracking a whip on bogus donation claims, it has been proposed that such notified research associations, university, college or institutions or company would not be entitled to provide weighted deduction under this Section unless they submit the prescribed statement to the income tax authority and furnish to the donor, a certificate specifying the amount of donation in the prescribed time and manner. In case of failure by such entities to file such prescribed statement within specified time limit, penalty is also proposed by inserting Section 271K of the Act. In such case tax authority has power to levy penalty from Rs.10,000 to Rs.1,00,000.

Option for claiming deduction of capital expenditure on specified business

Section 35AD(1) of the Act provided that an assessee incurring capital expenditure on a specified business shall be allowed deduction of 100% of such capital expenditure and sub-Section (4) of the said Section provides that no deduction is allowable under any other Section in respect of such capital expenditure.

With the introduction of Section 115BAB and 115BAA in the Income Tax Act, assessees availing the benefit of concessional rate of tax are not eligible to claim such deductions.

Section 35AD has been proposed to be amended to provide that such deduction shall be available to the assessee only if he opts for it. Consequently, where the assessee opts for such deduction, only then he won't be allowed to claim deduction of such capital expenditure under any other Section of the Act. This has removed the ambiguity regarding the claim of depreciation on such capital expenditure by the assessee's availing benefit of Section 115BAB and 115BAA wherein no deduction under Section 35AD can be claimed.

Deduction of certain expenses on payment basis under Section 43B

The provision of Section 44 of the Act provides for computation of profits and gains of entities engaged in Insurance

Business as per rules provided in First Schedule of the Act. The provision of Section 43B allows deduction of certain expenditure on payment basis only. Rule 5 of First Schedule provides manner of computation of profits and gains from such business which requires to add back expenditure which are not eligible under provisions of Section 30 to 43B of the Act. However, there is no enabling provision in said First Schedule to permit deduction of expenditure on payment basis under Section 43B which were earlier disallowed while computing taxable profits since the same were not paid. In order to bring clarity that such insurance companies are entitled for deduction of expenditure under Section 43B on payment basis, the Bill seeks to insert proviso after clause (c) of Rule 5 of First Schedule to allow such insurance companies to claim deduction of expenditure covered by Section 43B of the Act on payment basis.

Deduction under Section. 80IBA – "Affordable Housing Projects"

Section 80IBA of the Act provides for 100% deduction of profits and gains derived from the business of developing and building affordable housing projects subject to certain conditions. One of the conditions prescribed in the Section is the time limit for approval of the project by the competent authority. As per the existing provisions the project is required to be approved by the competent authority after June 1, 2016 but on or before March 31, 2020.

In order to incentivise building affordable housing to boost the supply of such houses, the period of approval of the project by the competent authority is proposed to be extended to March 31, 2021.

This amendment will take effect from April 1, 2021 and will, accordingly, apply in relation to the AY 2021-22 and subsequent AYs.

Increase in safe harbour limits for transactions in immovable property [Section 43CA, 56(2)(x) and 50C]

Under the Act the taxation of deemed income under Section 43CA, 50C & 56(2)(x) provides for replacement of the actual transaction value/sales consideration with stamp duty value thereof if the difference between actual transaction/sales value vs. stamp duty value is more than 5%.

In order to provide the further benefit to the taxpayer, the Bill proposes to increase such limit to 10%. Accordingly, if the stamp duty value is up to 110% of the consideration, then the provision of Section 43CA, 56(2)(x) or Section 50C shall not apply.

Cost of Acquisition & Period of Holding in case of Segregated Portfolio

The provision of Section 49 deals with determination of cost of acquisition under special circumstance where capital asset is not acquired in traditional manner. Similarly, the provisions of Section 2(42A) defines the term 'short term capital asset' basis period of holding for taxing capital gain. The said Section also deals with specific situations for determination of period of holding to consider transfer of capital asset as short term capital asset. In December 2018, SEBI has permitted segregation of Mutual Funds comprising of investment in money market instruments and debt funds. Accordingly, person holding units of such mutual funds are issued units in two separate schemes comprising of Units in "Main Portfolio" and Units in "Segregated Portfolio".

Under such circumstances, in order to determine nature of transfer of capital asset (being short term or Long term), the Bill proposes to amend provisions of Section 2(42A) so as to provide that the period of holding in case of 'segregated portfolio' shall be determined after including period for which units in 'Main portfolio' were held by the assessee.

Further, the Bill proposes to insert sub-Section (2AG) in Section 49 for the purpose of determination of cost of acquisition in respect of transfer of units 'Segregated Portfolio'. The same is determined basis following formula:

Cost of Acquisition (CoA) of Segregated Portfolio =

$$\text{CoA of 'total portfolio'} \times \frac{\text{Net asset value of units transferred in 'segregated portfolio'}}{\text{Net asset value of units originally allocated in 'total portfolio'}}$$

Further, the Bill proposes to insert sub-Section (2AH) in Section 49 for the purpose of determination of cost of acquisition in respect of transfer of units in 'Main Portfolio' which provides as under:

<u>Cost of Acquisition of Main Portfolio =</u> <u>Cost of acquisition of 'total portfolio' Less:</u> Cost of acquisition of Segregated Portfolio determined as per provisions of newly inserted sub-Section (2AG) in Section 49 of the Act.

Cost of Acquisition for immovable assets acquired before April 1, 2001

The existing provisions of Section 55 provides an option to assessee to adopt fair market value prevailing on April 1, 2001 or actual cost of acquisition for the purpose of determination of cost of acquisition for computing capital gain income from transfer of long-term capital asset. Such fair market value has been determined by the approved tax valuer considering various factors resulting into possibility of valuation which may be higher than prevailing stamp duty value at that point in time. The same is very subjective and litigative and prone to manipulation of creating higher valuation.

The Bill therefore seeks to amend said provision so as to restrict the fair value of cost of acquisition determined as on April 1, 2001 up to stamp duty value of such asset prevailing on April 1, 2001.

Carry forward and set-off of losses

Amalgamation of banks and general insurance business

Section 72AA of the Act provides for carry forward of accumulated losses and unabsorbed depreciation allowance in the case of amalgamation of banking company with any other banking institution under a scheme sanctioned and brought into force by the Central Government under sub-Section (7) of Section 45 of the Banking Regulation Act, 1949. In order to address the issue faced by the amalgamated public sector banks and public sector General Insurance Companies, it is proposed to extend the benefit of this Section to amalgamation of-

- one or more corresponding new bank or banks with any other corresponding new bank under a scheme brought into force by the Central Government under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or both, as the case may be, or
- One or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central Government under Section 16 of the General Insurance Business (Nationalisation) Act, 1972.

Withholding Tax

Tax Deduction at Source

TDS on Income from Dividend

With the proposed abolition of Dividend Distribution Tax (DDT), consequential changes have also been proposed to be made throughout the Act. Presently, Section 194 of the Act provides for deducting tax on dividends however, the third proviso to Section 194 states that no deduction shall be made on dividends if DDT has been paid under Section 115-O. Now, with the proposed abolition of DDT from April 1, 2020, the dividend distributed by companies after March 31, 2020, will not be liable to DDT and thus now onus of paying tax on such income will fall back on the recipient of income after April 1, 2020. Thus, the Bill has also proposed to provide for deducting tax on dividends paid by companies by removing the third proviso of Section 194.

As per the proposed amendment, the Companies distributing dividend shall be liable to deduct tax at the rate of 10%. The Section also provides that if total distribution to be paid by Mutual funds/ UTIs to a resident form does not exceed Rs. 5,000/- then TDS provisions would not apply.

Further, currently, no tax was deductible on dividends distributed by business trusts. However, with a view to bring about parity in taxability of dividends distributed by all entities, it is now proposed to amend Section 194LBA of the Act to provide that the business trusts shall also have to deduct tax on dividends distributed by them to residents as well as non-residents at the rate of 10%. Thus now, the business trusts shall have to deduct tax on interest as well as dividend distributed by them.

TDS on Income from Units of UTI & Mutual Funds

With the proposed abolition of Dividend Distribution Tax (DDT), no additional tax will be payable on the income distributed by Mutual funds & UTIs after March 31, 2020 and thus now onus of paying tax on such income will fall back on the Unit Holders after April 1, 2020. Thus, the Bill has also proposed to reintroduce the applicability of TDS on such Income in the hands of residents as well as non-residents.

<u>Residents:</u> Section 194K has been proposed to be introduced which now fastens the liability of deducting tax on any person responsible for paying to a resident any income in respect of units of certain Mutual Funds, administrator of the specified undertaking or UTI deduct tax at 10%. The Section also provides that if total distribution to be paid by Mutual funds/ UTIs to a resident form does not exceed Rs. 5,000/- then no tax would be deductible.

<u>Non-residents:</u> In case the Mutual Funds/UTIs are liable to distribute income to non-resident Unit Holders, then tax shall now be deductible under the provisions of Section 196A at a rate of 20%.

TDS on Interest payable by a Co-operative Society to its members

Currently, Section 194A of the Act provides for deduction of tax on payment on interest by a person other than an individual or HUF. However, the existing Section currently excludes from its scope the interest paid by co-operative societies to its members or to another co-operative societies and well as income on deposits place with co-operative societies.

To deepen the tax net and enlarge the scope of this Section, it is now proposed to provide for deduction of tax on the interest payments made by certain large co-operative societies viz. co-operative societies who's the total sales, gross receipts or turnover of the co-operative society exceeds Rs. 50 Crores during the financial year immediately preceding the financial year. Such co-operative societies shall be liable to TDS at the rate of 10% if the total interest to be credited to one person during the Financial year exceeds Rs. 40,000 (Rs. 50,000 is case of senior citizens). Thus, the matrix of TDS applicability for interest payments by co-operative societies is as under:

- Engaged in core banking solutions –TDS provisions apply (Rs. 40,000 / 50,000 threshold)
- Engaged in other business & turnover < Rs. 50 Crores –TDS not required

- Engaged in other business & turnover > Rs. 50 Crores –TDS provisions apply (Rs. 40,000 / 50,000 threshold)

This amendment will take effect from **April 1, 2020.**

Amendment in the definition of "work" under 194C

The Bill has proposed an amendment in the definition of "Work" under Section 194C of the Act with respect to the services getting covered under works contract. Currently, the provisions of withholding tax under the said Section are applicable only when a person manufactures or supplies a product according to the requirement or specification of the customer while using material purchased from such customer. The words "such customer" created a mechanism for tax evasion wherein certain customers used to ensure that the supplier purchases the materials from their close associate/relative and thereby shall not fall within the definition of "work" and not be liable to withhold tax on payments under Section 194C.

With the proposed amendment in the definition of "work", now even if the material is supplied by customer's related party under Section 40A(2)(b), even then it would fall within the definition of work and tax would have to be withheld while making the payment.

However, if the manufacturing or supplying of the product is according to the requirement or specifications of the customer, by using material purchased from a person other than the customer or its AE, in that case it shall not be included in the definition of work and thereby the payments shall not be liable to withholding tax.

Lower TDS rate on payment of Fees for Technical Services under 194J

There has been a longstanding dispute between the Income tax authorities and the assessees on payments for certain services as to whether they shall attract withholding tax under Section 194C or Section 194J. This is mainly on account of dispute of classification for payment between work contracts or fees for technical services. This has led to the income tax authorities treating the assessee in default on account of short deduction of tax. In an attempt to mitigate such litigation, the Bill has proposed to amend Section 194J and segregate the withholding tax rate for professional services and fees for technical services. As per the proposed amendment, new withholding tax rate of 2% on payments made in the nature of fees for technical services (not being professional service) has been proposed while on the hand, any other payment falling within the ambit of Section 194J would continue to attract the erstwhile 10% withholding tax rate.

Broadening the scope of concessional TDS rates for Interest income of certain entities

FIIs and QFIs: To promote foreign investment, the Government had previously introduced Section 194LD which provides a concessional TDS rate of

5% on interest on Rupee Denominated Bonds and Government Securities earned by Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs). Since the Foreign Portfolio Investors are now also allowed to invest in municipal bonds, it has been proposed to extend the concessional rate of 5% TDS under Section 194LD to include the interest income on municipal bonds.

Non-residents/foreign companies receiving interest from Indian Companies: Section 194LC provides a concessional TDS rate of 5% on interest income of non-resident/ foreign companies paid by Indian companies on certain loan agreements, long term bonds or Rupee denominated bonds.

It is now proposed to deduct TDS at a reduced rate of 4% in case if the interest income is earned on rupee denominated bonds (issued after April 1, 2020 but before July 1, 2023) which are listed on a recognized stock exchange located in an IFSC. This step seems to have been taken to further promote and incentivize the operations of International Financial Service Centres across the country

Further, the benefits of both the above Sections are currently available for loan arrangements entered into till July 1, 2020. The Bill has also proposed to extend the time limits by 3 years to July 1, 2023.

These amendments will come into force from April 1, 2020.

TDS on E-commerce transactions

Over the past decade, India has witnessed a massive shift from physical to an online marketplace. The catalyst behind this tremendous growth has been the increasing connectivity in the form of easier availability of internet services throughout the country. These digital marketplaces act as the intermediary between the buyers and the seller. Ideally, the sellers would be listed on the online platform and the buyers can choose to purchase products/services from such enlisted sellers. Amazon and Flipkart can be taken as examples of such digital marketplaces/platforms. These digital platforms make payments to the sellers after the sale of their goods or services to the buyer. The government has now proposed to bring the transaction between the digital platform and the sellers of goods and services within the purview of TDS.

The Bill proposes to introduce Section 194-O wherein TDS is to be deducted by e-commerce operator on payment made to e-commerce participants (sellers) at the rate of 1% for sale of goods or provision of service facilitated by it through its digital or electronic facility or platform. If the seller fails to furnish his PAN/Aadhaar then the tax would be deducted at 5%. Further, even in cases where the payment is made directly by the buyer to the seller (and not through the e-commerce operator), such sales would also be deemed to be paid by the e-commerce operator to the seller and shall be included in the gross amount of such sales or services for the purpose of deduction of tax. If the gross amount of sale of a seller, being an individual or an

HUF, through the e-commerce operator does not exceed Rs. 500,000/- then no tax shall be deducted under this Section.

This Section also provides that if TDS was to be done under this Section then there shall not be further liability on that transaction for TDS under any other provision of Chapter XVII-B of the Act. Section 194-O has specifically provided that 'services' would include fees for technical services and fees for professional services. This would imply that if a buyer obtains certain legal services from a seller/service provider listed on the online platform then the payment made by the buyer (even if directly made to the service provider) would be liable to TDS under Section 194-O and not under Section 194J.

This amendment will take effect from April 1, 2020.

Replacing Form 26AS with Annual Information Statement

Form 26AS which stems from Section 203AA of the Act currently provides the assessee with a statement wherein the amount of TDS/TCS standing to the assessee's credit are reflected. The Finance Minister has now proposed to do away with such statement in lieu of an Annual Information Statement which will be provided by the government in the assessee's registered account of the online Income-tax portal.

This amendment seems to have been made with the view to facilitate pre-filled Income Tax returns and limit the number of cases with mismatch in TDS/TCS credit. The Annual Information Return is proposed to be introduced vide Section 285BB of the Act and this statement will not only include the information on TDS/TCS credit and sale of immovable property but also share transaction information or any other information as submitted by the prescribed authority under the Act.

These amendments will take effect from **June 1, 2020.**

Tax Collection at Source

TCS on remittance under LRS and on sale of Overseas tour package

Looking to the consistently increasing amount of outward remittance made by Resident individuals under the Liberalized Remittance Scheme (LRS) of the RBI as well as the payments made abroad pursuant to foreign travel, Finance minister has proposed changes to Section 206C to include the such remittances within the TCS net.

The LRS allows resident individuals to remit outside India an amount up to $250,000 (equivalent to Rs. 17,500,000) under the automatic route, without obtaining permission from the RBI. The Section 206C now proposes to fasten to duty of collecting tax at source at the rate of 5% (10% in case of non-PAN/Aadhaar) on the authorised dealer receiving an amount under LRS. However, no such TCS would be collected if aggregate of amounts to be remitted by an individual during the Financial year does not exceed Rs. 750,000.

Further, onus has also been placed on seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, to collect TCS at the rate of 5% (10% in case of non-PAN/Aadhaar).

The afore discussed transactions will not be subjected to TCS if the buyer is required to deduct tax (TDS) under any other provisions of the Act or the buyer is the Central Government or other similar authorities expressly identified to fall out of the scope of this Section.

TCS on Sale of Goods

To further deepen the tax net, it is proposed to amend Section 206C to levy TCS on sale of goods above specified limit. New Sub-Section (1H) is proposed to be introduced in Section 206C wherein TCS at the rate of 0.1% (1% in case of non-PAN/Aadhar) on consideration received on sale of goods will be liable to be collected by the seller on satisfaction of the following dual conditions:

- turnover from the business of the seller exceeds Rs. 10 crores during the preceding the financial year
- aggregate consideration received from a buyer during the Financial year exceeds Rs. 50 Lacs.

The afore discussed transactions will not be subjected to TCS if the buyer is required to deduct tax (TDS) under any other provisions of the Act or the buyer is the Central Government or other similar authorities expressly identified to fall out of the scope of this Section.

Currently the definition of buyer does not exclude a person being non-resident and accordingly if a seller in India exports goods to non-resident, such seller is required to collect tax at source and deposit the same to the government. If such non-resident has no income chargeable to tax in India, which generally be the case, it will not bear such amount of TCS and accordingly the seller's income will go down. Further whether the TCS provision shall be made applicable when a buyer being a non-resident is also a highly disputed position under the Act.

These amendments will take effect from April 1, 2020.

Other withholding tax amendments

Other Amendments under TDS

Certain Sections under Chapter XVII of the Act wherein the modes of payment have been specified to read as "in cash or by the issue of a cheque or draft or by any other mode", this Bill proposes to amend such phrasing and it shall be substituted with "by any mode". Such amendment has been made in order to account for and include in its net, various new modes of payment and reducing ambiguity pertaining to the method of receiving payment. Such amendment has been made in Section 196A (Income in respect of units of Non-residents), 194C (Income from foreign currency bonds or shares of Indian Company) and Section 196D (Income of FII on Securities).

Certain Tax recovery Sections currently fasten the liability to deduct TDS/collect

TCS if the gross receipt or turnover from the business or profession carried on by them exceed the monetary limit specified Section 44AB. The Bill has enhanced the monetary limit under Section 44AB, however, the liability of TDS/TCS is proposed to be maintained at the existing limits. Thus the reference to Section 44AB has been removed from Sections 194A, 194C, 194H, 194I, 194J and 206C and the same is proposed to be substituted with rupees "one crore in case of the business or rupees fifty lakh in case of the profession, as the case may be."

Compliances and Procedures

Tax Audit & Certifications

Enhancement of turnover limit specified for Tax Audit in case of person carrying on business with lower cash transaction

The existing provisions of Section 44AB provides that every person carrying on business shall require to get its accounts audited if his total sales, turnover or gross receipts exceeds Rs. 1 Crore in a year. In order to promote ease of doing business for MSME entities across India and to reduce burden of compliances, the government has proposed to increase such limit to Rs. 5 Crore subject to condition that both the amount received in cash and payments made in cash in year under consideration is not more than 5% total amount of turnover or expenditure, respectively. It would be pertinent to note that the said enhanced limit would not be applicable in case where person is carrying on profession.

Further, the existing provisions of the Act requires an assessee to furnish tax audit report in Form 3CA/3CB -3CD on or before due date for filing return of income specified under Section 139 of the Act. However, the Bill proposes to amend provisions of Section 44AB of the Act so as to provide that an assessee shall require to furnish such tax audit report one month prior to due date for filing of income tax return.

This amendment would be applicable from Assessment Year 2020-2021.

Audit Report / Certificate to be filed one month prior to filing of tax return

In order to promote pre-filing of income-tax returns, the Bill has brought amendment in the due dates of filing of income-tax returns as well as in the due dates of filing various audit reports in a manner such that all the audit and accountants' reports which were earlier filed with the return of income will now be filed one month prior to the due date of filing Income-tax returns. This has a consequential impact on certain Sections wherein deduction was being claimed by the assessee in the return of income on the basis of the audit report / accountant's reports filed with the return of income. Now, with the said amendment coming into picture, such Audit report / Accountant's report need to be submitted on or before one month prior to the due date of filing of the income tax return.

In view to give effect to the idea of pre-filled returns the Sections requiring filing of audit report were required to be amended and accordingly the time limit for filing audit report has been amended in Section 10, Section 10A, Section 12A, Section 32AB, Section 33AB, Section 33ABA, Section 35D, Section 35E, Section 44AB, Section 44DA, Section 50B, Section 80-IA, Section 80-IB, Section 80JJAA, Section 92F, Section 115JB, Section 115JC and Section 115VW. As per the amended provision, audit report or certificate as referred in such Sections are now required to be file one month prior to the due date of filing of tax return.

Further the due date of filing of tax return of income in case of tax audit cases (excluding non-transfer pricing cases) has been extended from September 30 to October 31. In view of such changes, tax audit report/other specified certificate as referred above is required to be file in such case on or before September 30. In case of transfer pricing cases, such audit report and certificate are required to be filed on or before October 31 and tax returns need to be filed on or before November 30.

Other amendments

Existing 26AS to be larger informative statement

The existing provisions of Section 203AA of the Act requires the prescribed income-tax authority to prepare and deliver a statement in Form 26AS to every person from whose income, the tax has been deducted or in respect of whose income the tax has been paid specifying the amount of tax deducted or paid.

Form 26AS as prescribed in the Rules, contains the information about tax collected or deducted at source. However, with the advancement in technology and enhancement in the capacity of system, multiple information in respect of a person such as sale/purchase of immovable property, share transactions etc. are being captured or proposed to be captured. In future, it is envisaged that in order to facilitate compliance, this information will be provided to the assessee by uploading the same in the registered account of the assessee on the designated portal of the Income-tax Department, so that the same can be used by the assessee for filing of the return of income and calculating his correct tax liability.

As the mandate of Form 26AS would be required to be extended beyond the information about tax deducted, it is proposed to omit Section 203AA and introduce a new Section 285BB in the Act regarding annual financial statement. This Section proposes to mandate the prescribed income-tax authority or the person authorised by such authority to upload in the registered account of the assessee a statement in such form and manner and setting forth such information, which is in the possession of an income-tax authority, and within such time, as may be prescribed.

Verification of return of income and appearance by an authorised representative

Under the existing scheme of the Act, in case of company the return is required to be verified by the Managing Director (MD). Where the MD is not able to verify for any unavoidable reason or where there is no MD, any Director of the company can verify the return. It is also provided that in case of a company in whose case application for insolvency resolution process has been admitted by the Adjudicating Authority (AA) under the Insolvency and Bankruptcy Code, 2016 (IBC), the return has to be verified by the insolvency professional appointed by such AA. Similarly, in case of a limited liability partnership (LLP), the return has to be verified by the designated partner of the LLP or by any partner, in case there is no such designated partner.

Therefore, it is proposed to amend clause (c) and (cd) of Section 140 of the Act so as to enable any other person, as may be prescribed by the Board, to verify the return of income in the cases of a company and a limited liability partnership.

Further, Section 288 of the Act provides for the persons entitled to appear before any Income-tax Authority or the Appellate Tribunal, on behalf of an assessee, as its "authorised representative", in connection with any proceedings under that Act. While the IBC empowers the Insolvency Professional or the Administrator to exercise the powers of the Board of Directors or corporate debtor, it has been reported that lack of explicit reference in Section 288 of the Act for an Insolvency Professional to act as an authorised representative of the corporate debtor has been raising certain practical difficulties.

Therefore, it is proposed to amend sub-Section (2) of Section 288 to enable any other person, as may be prescribed by the Board, to appear as an authorised representative.

Assessment, Litigations and Penalties

Best Judgement Assessment

Currently the best judgement assessments defined under Section 144 are not covered under the e-assessments scheme. The Bill proposes to expand the scope of e-assessment to include assessments under Section 144 of the Act.

The Bill also proposes to provide that Central Government may issue any direction under sub-Section (3B) of Section 143 dealing with e-assessment scheme up to March 31, 2022 as against the existing time limit of March 31, 2020.

Penalty for false invoices or unaccounted transaction under Section 271AAD

It is observed by the tax department that practices of obtaining fake invoices by the suppliers registered under GST is prevalent in certain case to take the GST Credit and to minimum GST liability though actually there is no sale, purchase or supply of goods or services. In such cases, though such transaction has been disclosed in books of account and though the assessee can pay the taxes, if any, from income arising therefrom, such practice is required to be penalised as the same is not acceptable under any law. Since income tax can also be levied on income, if any, arising illegitimately, the Bill proposes to insert new Section 271AAD to penalise such transaction under the Act by imposing penalty equivalent to the amount of any false entry. This is in addition to any penalty and other consequences if any as arising under GST law. It is to be noted that for levying such penalty, tax department is not required to prove that the purpose of false entry is to evade the tax liability.

Further, the term "false entry" has been defined to include use or intention to use any of the following:

- forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence
- invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both
- invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

Further in addition to levy of penalty for false entry, the Bill also proposes to levy penalty for omission of any entry in books of account which is relevant for computation of total income of such person, to evade tax liability. Penalty amount is the amount equivalent to the amount of such omitted entry. However, if the taxpayer establishes that the omission of such entry in books of account is not to evade the payment of any tax liability but it is unintentional, such penalty cannot be imposed.

Further, identical amount of penalty can also be levied on any person who advises other person to make a false entry or omit any entry in books of account.

It is important to note that this penalty under Section 271AAD can be levied by any authority including the Assessing Officer concerned. It has been stated in the Section that in any proceedings, if it is found that a person has made a false entry or omitted any entry with an intention to evade to tax the penalty is leviable. The penalty under Section 271AAD in view of these provisions can be levied by an authority who conducted a survey under Section 133.

It is interesting to note that the above provision has been made applicable without prejudice to any other provision under the Act. This implies that penalty if any leviable under any other provision of the Act, covering the above situation, if any, shall also be leviable. In case of search cases, penalty can be levied for unaccounted income under Section 271AAB(1A) of the Act. Further Section 271AAB(1A) specifically provides that penalty cannot be levied for such undisclosed income under Section 270A of the Act. However, it is possible that penalty can be imposed under the proposed Section, in addition to Section 271AAB(1A) since with respect to undisclosed income, an assessee may not have recorded the transaction in books of account leading to a case of omitted entry.

Face-less Appeals (e-Appeals) & Penalty proceedings

The Finance Act 2018, amended provisions of Section 143 of the Act so as to enact new scheme for the purpose of making assessment (E-assessment) of the total income or loss of the assessee so as to impart greater efficiency, transparency and accountability by eliminating interface between the Assessing Officer and the Assessee during the course of assessment proceedings. The amendment was brought so as to reduce the manual interruption and ensure transparent dealings between the Assessee and the departmental authorities.

On the same lines, the Bill proposes to amend Section 250 of the Act to enable Central Government to enact a new scheme for deciding appeals through electronic mode so as to impart greater efficiency, transparency and accountability. The amendment is proposed to reduce the manual interruption and ensure transparent dealings between the Appellant and the Commissioner (Appeals). This proposal is in line with the digitalisation of Government procedures which shall encourage the paperless compliances. It is proposed that efficiency, transparency and accountability would be increased by introduction of technology, functional specialization and introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals). The proposal shall be effective in a way to promote the preservation of appeal records in digital form.

Similar amendment is proposed in Section 274 to carry out the proceedings for levy of penalty by the Assessing Officer through e-portal.

Expansion in scope of Dispute Resolution Panel

Under the existing provisions of Section 144C an eligible assessee can file objections to the Dispute Resolution Panel ("DRP") against the draft order. Eligible assessee has been defined as a person in whose case a transfer pricing adjustment under Section. 92CA(3) has been proposed or a foreign company.

The proposed amendment has expanded the definition of eligible assessee so as to include a non – resident other than a company. Now all assesses including non – resident individual can file objections before the DRP against the draft assessment order. The proposed amendment also includes cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of Section 144C as against the existing provisions dealing with variation only in the income or loss returned which is prejudicial to the interest of the assessee.

Stay by Income Tax Appellate Tribunal ("ITAT")

Under the existing provisions of the Act, the Appellate Tribunal may pass an order granting stay of demand in any proceedings pending before ITAT for the period of 180 days and the appeal shall be disposed off within said period of stay. If the appeal is not so disposed off, delay in disposing not being attributable to the Assessee, the ITAT is empowered to extend the stay for a further period as it thinks fit, however the aggregate of the period originally allowed and the period so extended should not exceed 365 days.

The existing law did not require an Assessee to make minimum payment of demand to obtain stay from ITAT. The statute provided adequate power to the ITAT to grant complete stay of the disputed demand in suitable cases.

The proposed amendment has curtailed the power of ITAT for granting complete stay of demand. The Bill proposes to provide that ITAT may grant stay of demand only if the Assessee deposits 20% of the disputed demand or furnishes adequate security of equal amount in respect thereof. It is also proposed that no extension of stay shall be granted by ITAT, where such appeal is not so disposed off within the period of stay as specified in the order of stay. However, on an application made by the assessee, a stay can be extended, if the delay in disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than 20 % per cent of the disputed demand or furnished security of equal amount in respect thereof. The total stay granted by ITAT cannot exceed 365 days.

Taxation of Trusts & NGOs

Re-Approval and New Approval of entities claiming exemption under Section 10(23C), under Section 11 and 80G

As per the existing provision, income of any fund or trust or institution or university or other educational institution or hospital or other medical institution is exempt from tax under clauses (iv), (v), (vi), (via) of Section 10(23C) of the Act provided it has obtained an approval from the prescribed authority in the manner as provided in Section 10(23C). Further, such approval is valid for maximum period of three years unless the same has been withdrawn by the prescribed authority in the manner provided in such Section.

Section 11 of the Act provides for exemption of income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied or accumulated during the previous year for such purposes in accordance with the provisions contained in Sections 11, 12, 12A, 12AA and 13 of the Act provided that they are granted approval under Section 12AA of the Act. Same was the case for entities claiming benefit of Section 80G of the Act.

To streamline the process of approval of new entities and to include the existing approved entities in such process, the Bill proposes to amend Section 10(23C), Section 80G, omit Section 12AA and insert a new Section 12AB as well as new clause (ac) to Section 12A(1) for re-approval of existing entities and approval of new entities in the manner provided hereafter. Further, such approval shall be valid for a limited period of 5 years.

Type of Entity	Time limit for application	Time limit for approval	Validity of approval	AY from which Approval is effective	Satisfaction by Tax Authority
Existing approved entities	On or before 31st August 2020	3 months from the end of the month in which the application is filed	Approval for 5 years	AY from which earlier approval was granted	Not required
New entities seeking approval	1 month prior to the commencement of the previous year relevant to the AY from which the said approval is sought	1 month from the end of the month in which the application is filed	Provisional approval for 3 years	Assessment year relating to previous year in which the application is made	Not required
Entities to whom the approval granted under this new provision is about to expire	Six months prior to expiry of such existing approval	6 months from the end of the month in which the application is filed	Approval for 5 years with a right to reject the approval if Commissioner is not satisfied	Assessment year relating to previous year from which the approval is sought	Commissioner will call for various information, documents and make enquiries etc. to satisfy about the genuineness of activities of such entities, compliance with requirement of any other law which is material of the purpose of achieving its objectives
Entities having provisional Approval	Six months prior to expiry of period of the provisional approval or within six months of commencement of its activities, whichever is earlier	6 months from the end of the month in which the application is filed	Approval for 5 years with a right to reject the approval if Commissioner is not satisfied	First of the AYs for which it was provisionally approved	

Type of Entity	Time limit for application	Time limit for approval	Validity of approval	AY from which Approval is effective	Satisfaction by Tax Authority
Entities whose approval has become inoperative due to first proviso to Section 11(7)	Six months prior to the commencement of the AY from which the said approval is sought to be made operative	6 months from the end of the month in which the application is filed	Approval for 5 years with a right to reject the approval if Commissioner is not satisfied	Assessment year relating to previous year in which the application is made	
Entities approved under Section 12AB which adopted or undertaken modifications of the objects which do not conform to the conditions of approval	30 days from the date of the said adoption or modification	6 months from the end of the month in which the application is filed	Approval for 5 years with a right to reject the approval if Commissioner is not satisfied	Assessment year relating to previous year in which the application is made	
All pending application as on June 1, 2020 already filed under existing provision	Not applicable	31st July 2020	Provisional approval for 3 years	Assessment year relating to previous year in which the application is made	Not required

Further, provision has been proposed to file appeal before ITAT in case of refusal of approval under Section 12AB of the Act.

The above proposed provision shall be applicable with effect from June 1, 2020.

It is to be noted that the rationale of giving approval for 5 years is stated to have non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day to day basis. However, the existing provision [15th proviso to Section 10(23C)] empowering the Commissioner to examine the genuineness of activity of such entities and to withdraw such exemption in case of non-compliance within the approval time limit is not withdrawn. Further, the Bill also proposes to empower the Principal Commissioner & Commissioner to cancel the registration granted to the trust or institution under Section 12AB, other than provisional registrations,

- where he is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be.
- subsequent to the grant of registration, if he notices that the exemption is not allowable to the trust/ institution due to operation of sub-Section (1) of Section 13 or it has not complied with any other law and the order of such non-compliance has either not been disputed or has attained finality.

Right to claim dual exemption under Section 11 and under Section 10(23C) done away

The existing provisions of Section 11(7) state that the entities which have been approved for claiming benefit of exemption under Section 11 would not be entitled to claim any benefit of exemption under other provisions of Section 10. However, exemption under Section 10 in respect of agricultural income and under Section 10(23C) are available. The Section is proposed to be amended to allow exemption to entities to which Section 10(46) is applicable being entities which are established or constituted under a Central or State Act or by a Central or State Government. Therefore, in cases where an entity is eligible to claim exemption under Section. 11, but an income or part of income becomes ineligible for exemption under Section 11, the same may be claimed as exempt under sub-Section (1), (23C) and Section (46) of Section 10 as applicable.

The Bill proposes to insert proviso to Section 11(7) of the Act to provide that exemption under Section 11 shall not be available in case such entity receives registration under Section 10(23C) or notified under Section 10(46) of the Act or June 1, 2020 whichever is later. Further in case such entity propose to get approval under Section.12AB for claiming exemption under Section.11, in that case the registration granted under Section

striking the right balance

10(23C) or notification issued under Section.10(46) would become inoperative from the date on which the approval under Section.12AB is granted.

Appeals to the Appellate Tribunal in case of denial of registration under Section.12A

The provision of Section 253(1) specifies the orders against which an Assessee can prefer appeal before the Appellate Tribunal. With effect from June 1, 2020, the order passed by the Principal Commissioner or Commissioner under Section 12AB in respect of application for registration of trust or institution under Section 12A can be appealed before Appellate Tribunal.

Relaxation of listing requirement for Business Trust

As per the existing provisions of Section 2(13A) of the Act, a "Business Trust" is defined to mean a Trust, inter alia, whose units are listed on a recognized stock exchange and only such Business Trust gets the benefit of pass through entity for any interest or rent income earned by it. In order to provide the same status to unlisted trust in respect of the tax treatments, the Bill proposes to do away with the requirement of listing of units on recognized stock exchange.

Tax on accreted income

The Bill has proposed to insert a new Section 12AB which provides for the procedure for fresh registrations for trusts or institution. Consequential amendment has been proposed to be carried out in Section 115TD, where a trust or an institution registered under clause 12AA or 12AB is either converted into any other form or merged with an entity other than a trust or fails to transfer its assets to another trust upon dissolution shall in addition to the income tax chargeable on the total income of the trust or institution shall also be taxed on its accreted income i.e. the FMV of the total assets less total liability.

Other Amendments

Strengthening the check to carry out survey operation under Section 133A by AO

Under the existing provisions of Section 133A of the Act, an income-tax authority as defined therein is empowered to conduct survey at the business premises of the assessee under his jurisdiction provided that no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said Section without prior approval of the Joint Director or the Joint Commissioner, as the case may be.

In order to further strengthen the check on the Survey operations by the tax department, the Bill proposes to amend Section 133A by providing that if the survey is required to be conducted based upon information received by the tax department from any prescribed authority, such action of survey can be taken by the tax authority below the rank of Joint Director or Joint Commissioner only by obtaining the permission from such Joint Director or Joint Commissioner. Further, if the survey is required to be conducted based upon any other information, it is necessary to have approval of Director or the Commissioner of Income Tax.

Incentives to resident Co-operative Societies

The Taxation Law Amendment Act 2019 introduced Section 115BAA so as to provide exiting domestic companies to opt for reduced rate of tax of 22% if it does not claim certain exemption / deductions as specified in said Section. Further provisions of MAT as applicable under Section 115JB are not applicable to such domestic companies. In order to provide similar option for concessional tax regime to co-operative societies, the Bill propose to insert new Section 115BAD which provides that resident co-operative societies would pay tax at their option at concessional tax rate of 22% from Assessment Year 2021-22 subject to certain conditions which are similar as applicable to domestic companies under Section 115BAA of the Act which are described in brief below:

- No deduction under Section 10AA, claim of additional depreciation under Section 32(1)(iia), Deduction under Section 32DA, 33AB, 33ABA, 35(1)(ii), 35(1)(iia),35(1)(iii), 35(2AA), 35AD, 35CCC and any deduction under Section Chapter VIA.
- No set off of carried forward losses or depreciation loss of earlier years if such loss is attributable to any of deductions specified in (i) above.
- Claim of depreciation under Section 32(1)(i) basis rates of depreciation as may be prescribed by the board in this regard
- Tax would be further subject to surcharge of 10%
- Provisions relating to provisions of Section 115JC and 115JD of the Act would not be applicable and therefore no Alternate Minimum Tax (AMT) would be applicable

Option once exercised cannot be withdrawn.

Introduction of CTT on new Commodities Transaction Products

The Finance Act 2013 introduced levy of Commodity Transaction Tax (CTT) on sale of commodity transactions at rate of 0.01% in line with Securities Transaction Tax (STT) levied on sale of certain securities. Subsequently, the Finance Act 2018 introduced CTT also on sale of options on commodity derivatives. Vide notification dated October 18, 2019, 'option in goods' has also been included in the definition of 'derivatives' in clause (ac) of Section 2 of the SCRA. Thus, new derivative product 'options in goods' as the underlying asset has recently emerged in commodity transaction market. Moreover, 'commodity futures' based on prices or indices of prices of 'commodity futures' is also likely to be introduced as a new product in the commodity derivative market.

Necessary changes are, therefore, proposed in Chapter VII of the Finance Act, 2013, to align the provisions of CTT with the changes in commodity derivative market by amending definition of 'taxable commodity transaction' so as to include above mentioned new products and levy CTT thereon.

Moreover, in order to encourage the commodity transactions, settled by physical or actual delivery of goods, it is proposed to charge CTT on the new commodity derivative products at lower rates as compare to existing products. Accordingly, the provisions specifying rate of CTT in Section 117 of Finance Act 2013 is proposed for adding new products and corresponding tax rates.

Exemption to Income of Sovereign Wealth Fund under Section 10(23FE)

Sovereign Wealth Fund is a state-owned investment funds of any country that invest in real estates and financial estates globally. In order to boost the investment in infrastructure sector in India, the Bill proposes to insert new clause (23FE) in Section 10 of the Act to provide complete exemption to income of such funds which are in the nature of dividend, interest or long term capital gains arising from an investment made by such fund in India whether in the form of debt or equity provided such investment is made in an entity carrying on business of operating and maintaining, or developing, operating and maintaining any infrastructure facility as defined in Section 80-IA(4) or any other business as specified by the Central Government in this behalf. Further such exemption is available if such investment is made on or before March 31, 2024 subject to lock in period of 3 years.

The above exemption is available to the following entities.

a) 100% subsidiary of the Abu Dhabi Investment Authority which should be a resident of UAE and makes such investment directly or indirectly out of the fund owned by the Government of UAE

b) Any sovereign wealth fund which fulfils all the following conditions

   a. It is wholly owned and controlled, directly or indirectly by the Government of a foreign country

   b. It is set up and regulated under the law of that foreign country

   c. the earning of such funds is credited to the account of such Government of such foreign country or any person designated by such government

   d. the asset of such funds in case of dissolution vests in such foreign government

   e. such fund does not undertake any commercial activity whether within or outside India

   f. it is notified by the Central Government in this behalf for the purpose of this Section

Exemption in respect of certain income of Indian Strategic Petroleum Reserves Limited under Section 10(48C)

The Bill proposes a new clause (48C) in Section 10, to exempt any income accruing or arising to Indian Strategic Petroleum Reserves Limited (ISPRL), being a wholly owned subsidiary of Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, as a result of an arrangement for replenishment of crude oil stored in its storage facility in pursuance to directions of the Central Government in this behalf. This exemption shall be subject to the condition that the crude oil is replenished in the storage facility within three years from the end of the financial year in which the crude oil was removed from the storage facility for the first time.

This amendment will take effect from in relation to the AY 2020-21 onwards.

No stamp Duty on instrument of transactions in IFSC

In order to incentives the stock exchanges and depositories established in an International Financial Service Centre set up in Section 18 of the SEZ Act, 2005, it has been provided to amend the provision of Section 9A of the Indian Stamp At, 1899 to provide that no stamp duty shall be chargeable in respect of the instrument of transaction in such stock exchanges or depositories.

Taxpayer's Charter

The Hon'ble Finance Minister in her budget speech emphasised that any tax system requires trust between taxpayers and the administration, and this would only be possible if the taxpayer's rights are clearly enumerated. With this intention, 119A has been proposed to be inserted in the Act to empower the Board to adopt and declare a Taxpayer's Charter. The government plans to issue such orders, instructions, directions or guidelines to income tax authorities as it may deem fit for the administration of the Charter.

Levy of fee from non-reporting by specified institutions & funds

The research associations, universities, college or other institution which are approved as per the requirements of Section 35 of the Act as well as the funds and institutions referred to in Section 80G of the Act are required to furnish certain statements to the tax authorities wherein comprehensive details of donations received will have to be provided (similar to the reporting done under TDS/TCS) to the tax authorities. Further, these institutions/funds are also required to furnish certificates to the donors within the evidencing the receipt of donation time limit prescribed under the Act.

In order to have a check on appropriate execution of the proposed introduced compliances, the Bill also proposes to introduce a levy of fee in case of failure in reporting by such institutions/funds. Section 234G proposes to levy a fee of Rupees Two hundred per day in case of failure of reporting /delivering the statements as required under Section 35 & Section 80 within the prescribed time period to the tax authorities and donors.

Vivad Se Vishwas Scheme

What is the Scheme

The Government has introduced the "Direct Tax Vivad Se Vishwas" Bill, 2020 which aims at reducing the direct tax litigations at all the forums of appeal pending as on 31-01-2020.

The Scheme will also assist in increasing the revenue collection for the Government and thereby also controlling the fiscal deficit.

The Government had already announced fast track disposal of appeals pending before CIT(A) by March, 2020. This Scheme will only fasten the process along with contributing to the revenue.

In Budget for 2020-21, the Hon'ble Finance Minister had proposed the concept of "Faceless Appeals". The Government aims to allow smooth transition to faceless appeals by considerably reducing the old pending litigation with the help of this Scheme.

What it means for Taxpayer

Taxpayers whose appeals are pending before CIT(A)/ITAT/High Court/Supreme Court as on 31-01-2020 will be eligible to opt for this Scheme.

If the Taxpayer opts for this Scheme and pays the **Tax Amount** disputed in the appeal by **31-03-2020**, it will get complete waiver from payment of interest, penalty and initiation of Prosecution.

If the Taxpayer opts for this Scheme but pays the **Tax amount** disputed in appeal after **31-03-2020**, it will be required to be additional amount of 10% of the Tax but limited to the amount of interest charged. Waiver from penalty and prosecution would still be available.

If the appeal pertains to penalty / interest / other fees, the taxpayer would be required to pay **25%** of the penalty / interest / other fees **by 31-03-2020**.

If the appeal pertains to penalty / interest / other fees and payment is made after 31-03-2020, 30% of the penalty / interest / other fees would be payable.

The Taxpayer will be required to file a declaration before the CIT or higher authority, as may be prescribed.

What is the Tax Amount

Amount of Tax liability which has been challenged in pending appeal + Amount of MAT liability which has been challenged in pending appeal

If the amount challenged is part of Tax liability as well as MAT liability, the amount as part of MAT liability shall be excluded.

In case of reduction of loss or converting loss into income, the Amount of Tax liability shall be the Tax leviable on the income assessed and for which appeal is pending as if such income assessed is the total income of the Assessee.

What are the Consequences

If the Taxpayer opts for this Scheme, the appeal pending before any appellate authority shall be deemed to be withdrawn.

The Taxpayer will be also be required to furnish proof of withdrawal of the appeal along with the Declaration.

Any arbitration, mediation conciliation under any law or with any other country for protection of investment or otherwise shall be withdrawn and proof of withdrawal is to be furnished with the Declaration.

Any arbitration, mediation conciliation or any claim or remedy available under any law or with any other country for protection of investment or otherwise shall be withdrawn and proof of withdrawal is to be furnished with the Declaration.

If the material particulars are false or declarant violates any condition or declarant acts otherwise than as required under this Bill, it shall be presumed that Declaration was never made and all the withdrawn proceedings shall stand revived.

Who is not eligible to avail the Scheme

The following tax arrears would not be eligible to opt for the Scheme:

- Tax arrears from Assessment made u/s 153A and 153C

- Where Prosecution has been initiated before filing Declaration
- Tax arrears from undisclosed foreign asset or undisclosed foreign income
- Assessment / Reassessment made consequent to exchange of information
- Where notice for enhancement has been received from CIT(A) on or before 31-01-2020.

Persons in whose case order of detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 has been made on or before filing of declaration.

Persons in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, the Prohibition of Benami Property Transactions Act, 1988 or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts

Persons notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on or before the filing of declaration.

Indirect Tax

India budget 2020

Striking the Right Balance

Major Announcement

- Date of issuance of Debit Note to be considered for claim of ITC as against an original invoice date.
- Claiming of ITC without invoice or bill shall be punishable offence
- Time limits and manner for availing ITC of certain unavailed credit under erstwhile law shall be prescribed
- Additional levy of Health Cess at 5% ad valorem on imported health & surgical instruments
- Imposition of safeguard duty to prevent the interest of the domestic industry
- Procedure prescribed for administration of Import under County of Origin Trade Agreement

Goods & Services Tax

Definitions

Earlier, Jammu & Kashmir listed in the category of State. Now, it is proposed to include in the category of Union Territory (Section 2)

Two union territories are merged (section 2):

- Dadra and Nagar Haveli &
- Daman and Diu

Composition scheme

Following category of supplier are excluded for the purpose of eligibility of composition scheme (section 10)

- Supplier of service not leviable to tax
- Inter-state supply of services
- E-commerce operator

Input Tax Credit (ITC)

In case of admissibility of ITC for Debit Note, an invoice date was considered. Now, date of debit note will be determinative for the purpose of admissibility of ITC. (Section 16(4) of CGST Act)

Tax Invoice

In addition to the present system of issuance of an invoice, it is proposed to notify the category of services/supplies for which tax invoice to be issued and their time and manner of issuance. (Section 31)

Tax Deducted at Source (TDS)

Presently TDS to be deducted for the supply made to the Government at the time of payment. However, there is not any specific form/certificate for tax deducted at source. Now it is proposed to make rules, form and manner of issuance of certificate of tax deduction at source. (Section 51)

Penalties

Proposed penalty on beneficiary at whose instances any fraudulent transactions are conducted (introduced new section 122A)

Proposed punishment and imprisonment (non-bailable on recipient for availment of input tax credit without invoice or bill (Section 132)

Transitional Credits

Section 140 of the CGST Act provides claim or carry forward of ITC in respect of erstwhile regime through TRAN-1 or TRAN-2. The said section was silent with respect to limitation of time applicable for such carry forward or availment, which was notified by Central Government under CGST Rules. It is proposed to amend Section 140 to prescribe time limit and manner of availment of such unclaimed ITC of erstwhile tax regime. (Retrospective amendment from 1 July 2017)

Removal of difficulty

Presently the Government is empowered for period of 3 years to address any difficulty in implementation of any provision. Now, it is proposed to extend the period up to 5 years (Section 172).

Retrospective change in GST rates/ exemptions:

Exemption from GST on supply of fishmeal for the period 1st July 2017 to 30th September 2019. (Retrospective exemption)

Levy of reduced rate of 12% tax on supply of pully, wheels and other parts (falling under heading 8483) compared existing rate of 18%.

Customs Act

Export Incentive Scheme

To boost Export, Government proposed to implement following Export Incentive Scheme:

- Export Credit Insurance Scheme
- Niryat Rin Vikas Yojana (NIRVIK)
- RODTEP (Remission of Duties or Taxes on Export Product) which will digitally refund local taxes to exporters and will replace the current Merchandise Exports from India Scheme (MEIS).

Imposition of Health Cess

Levy of Health Cess at the rate of 5% ad valorem

- In additional to Basic Customs Duty (BCD), additional 5% duty imposed on import of medical & surgical instruments, are falling in Customs Tariff HSN 9018 to 9022. This is specified in fourth schedule.
- It will be computed on value of goods imported (on assessable value)

- In case BCD is exempted on import of such medical & surgical instrument. Exemption from Health Cess shall also be available to such goods.
- Export promotion script(s) shall not be used for payment of health cess

Electronic duty credit ledger

Proposed to add "Duty credit script" in the list of Instruments in case of recovery of duties from a person against utilization of instruments issued under any other law, or under any scheme of the Central Government, in addition to the Foreign Trade (Development and Regulation) Act, 1992. (Section 28AAA)

Proposed to insert a new Chapter VIIA to establish automated an "Electronic Duty Credit Ledger". The ledger will be created on Customs portal in order to provide duty credit in lieu of duty remission for duty payment. Separate procedure for will be notified (newly inserted section 51B)

Recovery of duties

Section 28 of the Customs Act, as amended by the Finance Act, 2018 inter alia provided for a definite time frame for adjudication of demand notices ranging from six months to one year depending upon charges of collusion, suppression ,etc., failure of which would lead to the lapse of assessment proceedings. The existing Explanation 4 to Section 28 of the Customs Act provided that such amendment would apply only with respect to notices issued on/after March 29,2018.

Now, the above Explanation 4 is proposed to be substituted in order to explicitly clarify that all cases where notice has been issued before March 29, 2018, shall continue to be governed by the provisions of the Section 28 which existed before enactment of Finance Act 2018, notwithstanding, any judgement, decree, order of an any Court, Appellant Tribunal, or provision of any law, to the contrary.

Import under Preferential Tariff Free Trade Agreement

To introduce Chapter VAA of the Customs Act stipulating a scheme for administering the verification of the country of origin of the goods imported under preferential tariff Free Trade Agreements with different countries

It is proposed to set out procedure for import (Inserted new Section 28DA)

- Importer shall furnish detailed declaration in Certificate of Origin(COO);
- Make a declaration that the goods qualify for the preferential duty treatment by virtue of their origin;
- Exercise reasonable care as to the accuracy and truthfulness of the information;
- If, country of origin criteria has not been met then the importer is required to furnish further information, consistent with the trade agreement

Suspension of Preferential treatment

- In that case, the Authority may release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

- The Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.
- In case of temporary suspension, goods may be released subject to furnishing of security or payment of differential duty in prescribed manner. The authority may ask additional information
- Depending upon the provision of information by the issuing authority or its satisfactory nature, the proper officer shall restore or, as the case may be, disallow the preferential treatment giving reasons in writing
- Authority may ask additional information in case of incomplete or non-specific information.
- Request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer, subject to time limit specified in agreement
- the preferential tariff treatment may be refused without verification in the following circumstances, namely:—
  - the tariff item is not eligible for preferential tariff treatment;
  - complete description of goods is not contained in the certificate of origin;
  - any alteration in the certificate of origin is not authenticated by the Issuing Authority;
  - the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE"."
- The verification establishes non-compliance of country of origin criteria, the officer has the powers to reject the preferential tariff treatment to the imports of the identical goods from the same producer or exporter, unless proved otherwise
- Goods imported in contravention of the provisions shall be liable to confiscation.

Proposed to adopt safeguard measure to curb increase quantity imported in India to prevent injury to domestic industry (Section 8B of Customs Tariff Act)

- imposition of safeguard duty or
- application of tariff-rate quota (the quota shall not be lower than the average imports in the last three representative years) or
- other measures

Anti-Dumping duty & Countervailing Duty

It is prosed to amended ruled related to Anti-dumping duty for tightening the circumvention of

- Anti-Dumping and the Countervailing duties, the Anti-Dumping Duty Rules [i.e. Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury, 1995] (vide Notification 09/2020 Customs (N.T.) dated February 2, 2020)
- the Countervailing Duty Rules [i.e. Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury), Rules 1995] (Notification 10/2020 Customs (N.T.) dated February 2, 2020)

Substitute rule 25 of the Anti-Dumping Duty Rules to strengthen the anti-circumvention measures. "Circumvention" shall be considered where :

- a change in the trading patterns between any country and India (or between individual companies in any country and India) as a result of practice, process or work that cannot be adequately explained by legitimate reasons or economic justifications other than the circumvention of Anti-Dumping Duties, and
- where there is evidence of injury / dumping in comparison with the past normal prices for the like product. This enhances the scope which was previously limited to three specified circumvention practices, viz.
  - importation of subject goods in unassembled, unfinished or incomplete form
  - by way of minor alteration in appearance and form and
  - goods routed through any other exporter or country which was earlier not notified for Anti-Dumping Duty. Also, as per sub-rule 2(d) of the new Rule 25, any scenario which renders the imposition of Anti-Dumping Duty as ineffective shall be considered as circumvention.
- The Countervailing Duty Rules have been amended to enable investigation and imposition of duties into situations of circumvention of the said duty. Under the current Countervailing Duty Rules there is no provision for initiating an anti-circumvention investigation. However, the Rules have been amended to introduce such investigation powers similar to as available under the Anti-Dumping Duty Rules. Certain other changes have been made to bring clarity in the provisions including insertion of definition of "like article" and "period of investigation".

Social Welfare Surcharge

Exemption of Social Welfare Surcharge being withdrawn certain items covered under Chapter 84, 85, & 90.

Change in Rates

Increase in Excise Duty (effective from 1st February 2020):

Sr. No.	Chapter	Commodity	Rate of duty (Rs.)	
			Existing	Proposed
1	24022010	Other than filter cigarettes, of length not exceeding 65 millimetres.	90 per thousands	200 per thousands
2	24022020	Other than filter cigarettes, of length exceeding 65 millimetres, but not exceeding 70 millimetres.	145 per thousands	250 per thousands
3	24022030	Filter cigarettes of length (including the length of the filter, the length of the filter being 11 millimetres or its actual length whichever is more) not exceeding 65 millimetres.	90 per thousands	440 per thousands
4	24022040	Filter cigarettes of length (including the length of the filter, the length of the filter being 11 millimetres or its actual length whichever is more) exceeding 65 millimetres but not exceeding 70 millimetres	90 per thousands	440 per thousands
5	24022050	Filter cigarettes of length (including the length of the filter, the length of the filter being 11 millimetres or its actual length whichever is more) exceeding 70 millimetres but not exceeding 75 millimetres	145 per thousands	545 per thousands
6	24022090	Others (Cigarettes containing tobacco)	235 per thousand	735 per thousand
7	2402 90 10	Cigarettes of tobacco substitutes	150 per thousand	600 per thousand

Sr. No.	Chapter	Commodity	Rate of duty (Rs.)	
			Existing	Proposed
8	2403 11 10	Hookah or gudaku tobacco	10 per Kg	25 per Kg
9	2403 19 90	Other smoking tobacco		
10	2403 91 00	'Homogenized' or 'reconstituted' tobacco		
11	2403 99 10	Chewing Tobacco		
12	2403 99 20	Preparations containing chewing tobacco		
13	2403 99 30	Jarda scented tobacco		
14	2403 99 40	Snuff		
15	2403 99 50	Preparations containing snuff		
16	2403 99 60	Tobacco extracts and essence		
17	2403 99 90	Other (manufactured tobacco and substitutes)		
18	2403 19 10	Smoking mixtures for pipes and cigarettes	45 per Kg	60 per Kg

Change in tarrif rates:

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
Household goods and appliances				
1	Various chapters	Specified Household Items	10%	20%
2	84 & 85	Household Appliances	10%	20%
Machinery				
3	84145140	Railway Carriage fans	7.5%	10%
4	84145190	Other fans with a self-contained electric motor not exceeding 125 W	7.5%	20%
5	84145910	Air circulator	7.5%	10%
6	84145930	Industrial fans blowers and similar blowers	7.5%	10%
7	84145990	Other Industrial fans	7.5%	10%
8	84143000, 84148011	Compressor of refrigerator and gas compressor for air conditioner	7.5%	12.5%
9	84198980	Pressure vessels	7.5%	10%
10	84181010	Commercial type combined refrigerator freezers fitted with separate external doors.	7.5%	15%
11	84183010	Commercial freezer of chest type, not exceeding 800lt capacity	7.5%	15%
12	84183090	Other chest type freezer, not exceeding 800lt capacity	10%	15%
13	84184010	Electrical freezers of upright type, not exceeding 900lt capacity	7.5%	15%
14	84184090	Other freezers of upright type, not exceeding 900lt capacity	7.5%	15%
15	84185000	Refrigerating or freezing display and storage counters, cabinets, showcases and the like	7.5%	15%
16	84186100	Heat pumps other than AC machines	7.5%	15%
17	84186910	Ice making machinery	7.5%	15%
18	84186920	Water cooler	10%	15%
19	84186930	Vending machine, other than automatic	10%	15%
20	84186940	Refrigerating equipment/devices used in leather industry	7.5%	15%

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
21	84186950	Refrigerated farm tanks, industrial ice cream freezer	7.5%	15%
22	84186990	Others [refrigerating and freezing equipment]	7.5%	15%
23	8515(except 85159000)	Welding and plasma and electric machines and apparatus whether or not capable of cutting	7.5%	10%
Other electronic goods				
24	850440 (except 85044021)	Static converters	15%	20%
25	85044021	Dip bridge rectifier	10%	20%
26	85177010	Populated, loaded or stuffed printed circuit boards	10%	20%
Automobile and its parts				
27	84213920, 84213930	Catalytic converters	10%	15%
Furniture Goods				
28	9401	Seats and part of seats	20%	25%
29	9403	Other Furniture and parts	20%	25%
30	9404	Mattress supports, articles of bedding and similar furnishing	20%	25%
31	9405	Lamps and lighting fittings including search lights and sport lights and part thereof, illuminated signs, illuminated name plates and the like, having a permanently fixed light source, and parts thereof except solar lantern and solar lamps	20%	25%
Toys				
32	9503	Tricycles, scooters, pedal-cars and similar wheeled toys; dolls carriages; dolls; other toys; reduced-sized ('scaled') models and similar recreational models, working or not; puzzles of all kinds	20%	60%
33	Chapter 83	Specified stationary items	10%	20%

Entries added in Custom Tariff:

Sr. No.	Chapter	Commodity	Rate of Duty	
			Existing	Proposed
1	8414 51 50	Wall Fans	10%	20%
2	8529 90 30	Open cell for television set	15%	0%
3	8541 40 11	Solar cells not assembled	20%	0%
4	8541 40 12	Solar cells assembled in modules or made up in panels	20%	0%

Amendments in BCD (Effective from 1st April 2020):

Sr. No.	Heading, Sub-heading, tariff item	Commodity	Tariff Duty rates (percent)	
			From	To
1	85177010	PCBA of cellular mobile phones	10	20
2	85177090	Vibrator/ringer of cellular mobile phones	Nil	10
3	8702, 8704	Completely built units (CBUs) of commercial vehicles (other than commercial vehicles)	30	40
4	8702, 8704	Completely built units (CBUs) of commercial electric vehicles	25	40
5	8703	Semi knocked down (SKD) forms of electric passenger vehicles	15	30
6	8702, 8704, 8711	Semi knocked down (SKD) forms of electric vehicles-bus, trucks and two-wheelers	15	25
7	8702, 8704, 8711	Completely knocked down (CKD) forms of electric vehicles-passenger vehicles, three-wheelers, two wheelers, bus and trucks.	10	15

- Exemption from Social Welfare surcharge introduced on all commercial vehicles (including electric vehicle).

Customs

striking the right balance

Amendments in BCD (Effective from 1st October 2020):

Sr. No.	Heading, Sub-heading, tariff item	Commodity	Tariff Duty rates (percent)	
			From	To
1	8517 70 90	Display panel and touch assembly of cellular mobile phones	Nil	10

Other Changes (effective from 2nd February 2020)

- Exemption on import of goods under Professional trade agreement from SAARC countries withdrawn
- Exemption from levy of additional duty of custom on goods imported from Nepal withdrawn
- Preferential rate of BCD on specified products withdrawn
- Exemption from BCD withdrawn on specified products
- Exemption from Social Welfare surcharge withdrawn on specified goods of Chapter 84, 85 and 90 of First Schedule to Customs Tariff Act, 1975 and exemption introduced on certain new products.

Changes in effective BCD rates of key products

Sr. No.	Commodity	Effective Duty Rates (Percent)	
		Per cent	To
	Machinery		
1	Goods specified in list 10 of Notification No. 50/2017 – Customs dated 30.6.2017, required for use in high voltage power transmission project	5%	7.5%
2	Rotary tillers/weeder	2.5%	7.5%
3	Goods specified in List 14 of Notification No. 50/2017 – Customs dated 30.6.2017, required for construction of road like paver finisher, machines for filling up cracks in roads, mobile bridge inspection units etc.	NIL	Applicable BCD
4	Motors like single phase AC motors, stepper motors, wiper motors etc.	7.5%	10%
	Electronic goods, parts thereof		
5	Copper and articles there of used in manufacturing of specified electronic items	NIL	Applicable BCD
6	Specified chargers and power adapters	Applicable BCD	20%
7	Headphones and earphones	Applicable BCD	15%
8	Following parts of microphone for use in manufacture of microphone namely, a. Microphone cartridge b. Microphone holder c. Microphone grill d. Microphone body, etc.	10%	NIL
9	Micro-fused base, sub-miniature fuse base, micro-fuse Cover and sub-miniature fuse cover for use in manufacture of micro fuse and sub-miniature fuse	7.5%	NIL
	Automobile and Automobile parts		
10	Noble metal solutions and noble metal compounds used in manufacture of catalytic converter and their parts	5%	Applicable BCD
11	Platinum or palladium used in manufacturing of catalytic converter and their parts	5%	Applicable BCD

Sr. No.	Commodity	Effective Duty Rates (Percent)	
		Per cent	To
12	a. Parts of catalytic converter for manufacture of catalytic converters. b. The following goods for use in the manufacture of catalytic converters and its parts, namely: i. Raw substrates (ceramics) ii. Wash coated substrates (ceramics) iii. Raw substrates (metals) iv. Wash coated substrates (metals) v. Stainless steel wire cloth stripe vi. Wash coat	5%	7.5%
Defence Sector			
13	Exemption from import duty for specified military equipment, when imported by defence PSUs and other PSUs for defence forces	As applicable	NIL

Social Welfare Surcharge

Exempted for the following entries

CTH	Description of Goods
0404 10 10	Whey, concentrated, evaporated or condensed, liquid or semi-liquid
0406 90 00	Other Cheese
0601	Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant, in growth or in flower; chicory plants and roots other than roots of heading 1212
0602	Other live plants (including their roots), cuttings and slips; mushroom spawn
0802 31 00	Walnuts, in-shell
0802 32 00	Walnuts, shelled
0802 12 00	Almonds, shelled
1001 99 20	Meslin
1001 11 00	Durum wheat, seed
1001 91 00	Wheat, other seed
1005 90	Maize
1704 10 00	Chewing gum, whether or not sugar coated
1901 10	Preparations suitable for infants or young Children, put up for retail sale
2204	Wine of fresh grapes, including fortified wine; grape must other than that of heading 2009
2205	Vermouth and other wine of fresh grapes flavored with plants or aromatic substances
2206 00 00	Other fermented beverages; mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included

CTH	Description of Goods
2515 12 20	Slabs
6802 10 00	Tiles, cubes and similar articles, whether or not rectangular (including square), the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm; artificially coloured granules, chippings and powder, other monumental or building stone and articles thereof, simply cut sawn with a flat even surface
6802 21 10	Marble blocks/tiles
6802 21 20	Marble monumental stone
6802 21 90	Other tiles, cubes and similar articles
6802 91 00	Marble, travertine and alabaster
6802 92 00	Other calcareous stone

Social Welfare Surcharge introduced for the following entries:

CTH	Description of Goods
Chapter 90	Optical, photographic, cinematographic, measuring, checking, precision, medical, or surgical instruments and apparatus, clocks and watches, musical instruments, parts and accessories thereof
Chapter 84	8443, 8443 31 00 (including parts and accessories), 8443 32 (including parts and accessories), 8472 90 91, 8470, 8471, 8473 21 00, 8473 29 00, 8473 50 00, 8473 30 00, 8472 90 30 (ATM), 8473 40 (printed circuit assemblies for ATM),
Chapter 85	8517, 8519 50 00, 8523, recorded media for reproducing phenomena other than sound or image of heading 8523, 8531 20, 8532, 8533, 8534 00 00, 8541, parts of electronic integrated circuits and micro-assemblies of tariff item 8523 52 or 8542 90 00, 8543 59 10, 8543 70 11, 8517 69 50, 8517 69 60, 8517 69 70, 8517 69 90, 8517 70 10, 8517 62 (units of automatic data processing machine), 8528 42 00, 8528 52 00 or 8528 62 00, Parts and accessories (heading 8529) of goods falling under tariff items 8528 42 00, 8528 52 00 or 8528 62 00, 8504 40 (Static converters for automatic data processing machine), 8504 50 (other inductors for power supply to automatic data processing, printed circuit assemblies for 8518 90, 8522 90, 8538 90 (for goods of heading 8536), 8543 90 00, Electric conductor 8544 42, 8517 12 10 and 8517 12 90

Following notifications have been rescinded:

Sr. No.	Notification No.	Particulars
1	Notification 205/92-Cus dated May 19, 1992	Import against an advance customs clearance permit
2	Notification 73/99-Cus dated June 8, 1999	Exemption to Power Grid Corporation of India Limited on import of specified equipment's, required for setting up the Rihand-Sasaram- Biharshariff HVDC Link Back to Back Station Project
3	Notification 105/99-Cus dated August 10, 1999	Concessional rate of duties on goods when imported from SAARC Countries under SAARC Preferential Trade Agreement, 1995
4	Notification 22/2003-Cus dated February 4, 2003	Exemption to paper money, woollen apparels etc. received as gift by Indian Red Cross
5	Notification 14/2004-Cus dated January 8, 2004	Exempt water supply projects for agricultural and industrial use
6	Notification 56/2006-Cus dated June7, 2006	Exemption to primary products imported from Nepal from additional duty of Customs
7	Notification 22/2007-Cus dated March 1, 2007	Peak rates for preferential rates for Custom Duty
8	Notification 13/2010-Cus dated February 19, 2010	Exemption of Customs Duty on specified goods when imported into India for the purpose of organising the Common Wealth Games, 2010

References

India budget 2020

Striking the Right Balance

Tax Rates for AY 2021-22

*[To be increased by applicable surcharge and health & education cess (see Notes)]

Individual, HUF, AOP & BOI

Taxable Income	All Individual, HUF, AOP & BOI	Resident Individual of 60 years or more age	Resident Individual of 80 years or more age
Upto Rs. 2,50,000	Nil	Nil	Nil
Rs. 2,50,001 to Rs. 3,00,000	5%	Nil	Nil
Rs. 3,00,001 to Rs. 5,00,000	5%	5%	Nil
Rs. 5,00,001 to Rs. 10,00,000	20%	20%	20%
Rs. 10,00,001 and above	30%	30%	30%

Optional Tax regime for all Individual, HUF (Insertion of New Section 115BAC)

Taxable Income	All Individual, HUF
Upto Rs. 2,50,000	Nil
Rs. 2,50,001 to Rs. 5,00,000	5%
Rs. 5,00,001 to Rs. 7,50,000	10%
Rs. 7,50,001 to Rs. 10,00,000	15%
Rs. 10,00,001 to Rs. 12,50,000	20%
Rs. 12,50,001 to Rs. 15,00,000	25%
Rs. 15,00,001 and above	30%

This optional tax regime shall be exercised by Individual or HUF without claiming any exemption or deductions as prescribed u/s. 115BAC and under relevant rules.

Partnership Firm & Foreign Companies

Particulars	General Tax Rate
Partnership Firm & LLP	30%
Foreign Company	40%

Domestic Companies

Particulars	General Tax Rate
Domestic Company with Turnover / Gross Receipts up to Rs. 400 Crores in FY 2018-19	25%
Domestic Company opted for taxation under section 115BA	25%
Domestic Companies opted for taxation under Section 115BAA	22%
Domestic Manufacturing Companies incorporated on or after 1st October 2019 opted for taxation under Section 115BAB	15%
Domestic Companies not covered above	30%

Co-operative Society

Total Income	General Tax Rate
Upto Rs. 10,000	10%
Rs. 10,001 to 20,000	20%
Rs. 20,001 and above	30%

Resident Co-operative Society (Insertion of New Section 115BAD)

Particulars	General Tax Rate
Co-operative Society opted for taxation u/s 115BAD	22%

Special Rates of Tax (applicable to all assesses)

Nature of Income	Rate of Tax
Minimum Alternate Tax (Section 115JB) excluding company opted under section 115BAA and 115BAB.	15%
Alternate Minimum Tax (Section 115JC) excluding person opted for tax regime under section 115BAC and 115BAD	18.5%
STCG on listed securities (Section 111A)	15%
LTCG on listed equity share, units equity oriented mutual funds or business trust exceeding Rs. 1,00,000 (Section 112A)	10%
LTCG on unlisted securities or shares of a company in which the public are not substantially interested derived by **Non Resident** (Section 112)	10%
LTCG on assets other than listed securities and zero-coupon bonds (Section 112)	20%
Royalty & Fees for Technical Services derived by **Non-Resident** (Section 115A)	10%
Dividend derived by non-resident subject to tax treaty benefit	20%
Tax payable by any Company (other than Foreign) on Buy-back of Shares /(Section 115QA)	20%
Income by way of Royalty in respect of a patent developed and registered in India derived by **Resident** (Section 115BBF)	10%
Dividend Income received from Certain Specified Foreign Companies (Section 115BBD)	15%

Note 1: Surcharge on Income Tax

Total Income	Upto Rs. 50 Lacs	Rs. 50 Lacs to Rs. 1 Cr.	Rs. 1 Cr. to Rs. 2 Cr.	Rs. 2 Cr. to Rs. 5 Cr.	Rs. 5 Cr. to Rs. 10 Cr.	Above Rs. 10 Cr.
Individual / HUF/ AOP/ BOI	Nil	10%	15%	25%	37%**	37%**
Co-operative Society	Nil	Nil	12%	12%	12%	12%
Co-operative Society (under new tax regime)	10%	10%	10%	10%	10%	10%
Partnership Firm / LLP	Nil	Nil	12%	12%	12%	12%
Foreign Company	Nil	Nil	2%	2%	2%	5%
Domestic Company						
Domestic Company (not opting for lower taxation u/s 115BAA & 115BAB)	Nil	Nil	7%	7%	7%	12%
Domestic Manufacturing Companies u/s 115BAA & 115BAB	10%	10%	10%	10%	10%	10%

**Such surcharge applicable shall not be applicable on tax payable on capital gains arising from transfer of certain securities u/s. 111A, 112A & 115AD. Applicable surcharge would be 15%.

Note 2: Health & Education Cess: 4% of Income Tax & Surcharge [Applicable to all assessee]

Note3: A non-resident including foreign company can also avail lower rate of tax, if any, specified under applicable tax treaty subject to compliance with treaty access provision as provided under the Act.

TDS Rates for FY 2020-21

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
192	Salary	As per Slab	As per Slab
192A	Premature Withdrawal of Provident Fund	50,000	10%
193	Interest on Securities		
	(1) Interest on Debentures or Securities (Listed/Unlisted)	5,000**	10%
	(2) Interest on 7.75% Savings (Taxable) Bonds, 2018	10,000	10%
	(3) Any Other Interest on Securities (Unlisted)	0	10%
194	Dividend (including deemed dividend) received by resident individual	5,000*	10%
194A	(1) Interest paid by Banking Company, Co-operative Society/Banks engaged in banking business, Post Office under a deposit scheme framed by Central Government	40,000***	10%
	(2) Interest other than Interest on Securities (Other than above)	5,000	10%
194B	Winning from Lotteries	10,000	30%
194BB	Winnings from Horse Races	10,000	30%
194C	Payments to Contractors		
	(1) Payment to Transporter covered by Section 44AE [2]	NA	NIL[2]
	(2) Payment to Individual / HUF (other than above)	30,000[2a]	1%
	(3) Payment to Others (other than above)	30,000[2a]	2%
194D	Insurance Commission	15,000	5%
194DA	Income component received from LIC which are not covered u/s 10(10D) (w.e.f 01/09/2019)	0	5%
194E	Non-Resident Sportsman /Sports Association / Entertainer	0	20%[1]
194EE	Deposits under NSS to Resident / Non-Resident	2,500	10% [1]
194F	Repurchase of units of Mutual Fund /UTI from Resident / Non-Resident	0	20%[1]
194G	Commission on Sale of lottery tickets to Resident / Non- Resident	15,000	5%[1]

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194H	Commission or Brokerage to Resident	15,000	5%
194I	Rent to Resident		
	(a) Rent for machinery / plant / equipment	2,40,000	2%
	(b) Rent for other than in (a)	2,40,000	10%
194-IA	Payment on transfer or certain immovable properties (Other than agricultural land)	50,00,000	1%
194-IB	Payment of Rent by certain Individuals or HUF (other than those who are covered u/s 194I) to a resident	50,000 p.m.	5%
194-IC	Payment under specified agreement (in case of joint development agreement excluding payment in kind)	0	10%
194J	Payment to resident assessee for professional services, royalty, sum referred u/s 28(va) excluding fees for technical services	30,000	10%
	Payment to resident assessee for fees for technical services or payment to assessee engaged in the business of call centre	30,000	2%
	Remuneration, fees, commission paid to Director (other than those on which tax is required to be deducted u/s 192) which is not in the nature of Salary	0	10%
194K	Dividend payable to resident by Mutual Fund registered u/s 10(23D)	5000	10%
194LA	Compensation to a resident on acquisition of immovable property (excluding compensation received under RFCTLAAR Act, 2013)	2,50,000	10%
194LB	Interest paid to a Non-Resident by the Notified Infrastructure Debt	0	5%[1]
194LBA	Payment to a resident Unit Holder specified in Section 115UA	0	10%
	Payment of Interest to a non- resident Unit Holder specified in Section 115UA	0	5%[1]
	Payment of Dividend to a non- resident Unit Holder specified in Section 115UA	0	10%[1]
194LBB	Income in respect of units of investment fund under Section 115UB		
	(1) In case of Payee being Resident	0	10%
	(2) In case of Payee being Non-Resident	0	Rate in Force[1]

TDS Rates for FY 2020-21

Rates of Tax Deducted at Source (See Notes)

Section	Nature of Payment	Threshold Limit	Rate
194LBC	Income distribution to an investor by Securitisation Trust in respect of Section 115TCA		
	(1) In case of Payee being Resident Ind/HUF	NA	25%
	(2) In case of Payee being Resident any other person	NA	30%
	(3) In case of Payee being Non-Resident	NA	Rate in Force[1]
194LC	Interest paid by Specified Company to a Non-Resident on ECB	0	5%[1]
	Interest paid by Specified Company to a Non-Resident on Long term Bond or Rupee Denominated Bonds listed on recognized stock exchange	0	4%[1]
194LD	Interest payments to FII and QFI's on their Investment in Govt. Securities and RDB of an Indian Company, Municipal debt security	0	5%[1]
194M	Payment by Individual/HUF, to Contractors & Professionals (not covered by 194C & 194J)	Rs. 50 Lacs	5%
194N	TDS on cash withdrawal	Rs. 1 Crore	2%
194-O	Payment by e-commerce operator to e-commerce participant in respect of sale of goods or services	Rs. 5 lacs[3]	1%
195	Payment of other sums to Non-Resident (Other than those specified in Section 194LB)	Rates specified under Part II of First Schedule of Bill, including applicable surcharge and education cess subject to rate specified under applicable DTAA	
196A	Income to non-residents in respect of units of MF as specified u/s 10(23D) or of specified company as specified u/s explanation of 10(35)[4]	0	20%[1]
196B	Income from units (including long term capital gain on transfer of such units) to an offshore fund	0	10%[1]
196C	Income from foreign currency bonds or GDR of Indian Company	0	10%[1]
196D	Income of FII from securities not being long term and short-term capital gain	0	20%[1]
Equilisation Levy	Equalisation Levy in respect of online advertisement payment made to Non-Resident (not having PE in India)	0	6%

(* in case of Resident Individual only) (** in case of Resident Individual / HUF only)

(*** Rs. 50,000 in case of Resident Senior Citizen)

[1] All rates of TDS for Non-Resident Assessee shall be increased by applicable Surcharge, Health & Education Cess.

[2] Transporter means persons engaged in plying, hiring and leasing of Goods Carriages having Income u/s. 44AE and not owning more than 10 goods carriage. Nil rates will be applicable if the transporter quotes his PAN and furnishes prescribed declaration.

[2a] This limit is for individual transaction. However, if aggregate payment to contractors during the year exceeds Rs.1,00,000 then tax will have required to be deducted even where individual transaction is less than the threshold limit of Rs. 30,000.

[3] This limit is provided to only e commerce participant being resident individual or HUF whose gross amount from sale of services and goods does not exceed Rs. 5 lacs and provided PAN or Aadhar card.

[4] No TDS will be withheld, in case where units have been acquired from UTI out of Non-Resident External account maintained in India or remittance of Funds in foreign currency as per FEMA regulations.

Note:

- In order to strengthen the PAN Mechanism, any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:

  (i) prescribed in the Act;

  (ii) at the rate in force i.e. the rate mentioned in the Finance Act; Or

  (iii) 20%

  However, in the case of TDS is required to be deducted u/s 194-O, the maximum TDS rate will be 5% instead of 20%.

- A non-resident including foreign company is subject to lower withholding tax, if any, specified under applicable tax treaty subject to compliance with treaty access provision and TDS Compliance provisions as provided under the Act.

TCS Rates

Rates of Tax Collected at Source

Section	Nature of Transaction	Threshold Limit	Rate
206C	Sale of alcoholic Liquor for human consumption & Indian made foreign Liquor	0	1%
206C	Sale of Timber obtained by any mode and any other forest produce	0	2.5%
206C	Sale of scrap	0	1%
206C	Parking Lot/ Toll plaza/Mining and Quarrying	0	2%
206C	Sale of tendu Leaves	0	5%
206C	Minerals, being coal or lignite or iron ore	0	1%
206C(1F)	Sale of Motor Car	10,00,000	1%
206C(1G)	Remittance out of India under the LRS of RBI	7,00,000	5%
206C(1G)	Sale of overseas Tour Package	0	5%
206C(1H)	Sale of goods not covered under any of the above provision	50,00,000 [1]	0.1%

*No TCS will be applicable in case where the buyer already deducts TDS.

[1] The provisions of section 206C(1H) is applicable to seller whose turnover exceeded Rs. 10 crore during the immediately preceding financial year. Further, certain specified buyer such as central or state government, local authority or any other person as specified are excluded from the provision of the said section.

Note:
In order to strengthen the PAN Mechanism, any person-

- who makes above payment are subject to collection of tax at source with information of PAN of collectee i.e. the collectee, shall mandatorily furnish his PAN to the collector failing which the collector shall collect tax at source at higher of the following rates:
  (i) at twice the rate speci?ed in the section, or
  (ii) at the rate of 5%*

*In a case where TCS need to be collected u/s 206C(1H) and buyer has not provided PAN or Aadhar Card, TCS will be collected at the rate of 1%.

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